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REVISED RECORD

OF THE

CONSTITUTIONAL CONVENTION

OF THE

STATE OF NEW YORK

APRIL SIXTH TO SEPTEMBER TENTH

1915

VOLUME IV

ALBANY
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1916

it not well to try out that experiment? Let the Governor demonstrate his ability to do some of these lesser things, for which he is responsible enough if he tries to be, before we think about putting him forward for the greater ones. Then we come to the question, is representative government a failure? Don't the people know enough to govern themselves and elect their officers? I remember the question: "Is marriage a failure?" was propounded once and a certain thrifty old gentleman said, "Yacob, if the girl is very wealthy, it might be almost as good as a failure." Are our people ready to confess that they cannot elect people to carry on their business? If so, let us have the emperor come along. They say the people are too busy, they cannot find the man on the ballot. You let them put somebody on the town meeting ballot, which is two feet long, and hide him anywhere you please in there; if they want to "get" him, they will get him, either way. You put anybody on the State ballot, on a ballot ten feet long, and if they want him they will get him. You need not be alarmed. They may be fooled by his recommendations perhaps, in the first place, but they will not be fooled about his location on the ticket after he has betrayed them once. You need not have any worry about that. The people that surrender up their right to the ballot will be a long time seeing it back. I have noticed that the turkey that enters into the Thanksgiving spirit and walks up and lays his head across the block hardly ever gets back again.

If our people are going to be saved in their liberties it is not going to be by lying down and saying "we can not bother with this," but it is going to be by more exercise of the right of sovereignty, more authority in the election and rejection of the people who are doing their business. If their duties are to be taken off their hands gently and lightly by some gentleman who will appoint and do it all for them, it will not be very long before they are unfit to do any of their business and unfit to select the man that is going to do it for them. I hope that I shall never see the strong right arm of the people withered and atrophied by the laziness that shrinks from exercising duties and bearing governmental responsibilities. There is another feature of this bill which I see is not uniform throughout. In one place the Governor is given power to remove without question. That, I think, is as it should be. In the other place he is given power to remove by libel, and slander and expense. It is said that a broad grin is the shortest line between two ears; a straight line is the shortest distance between two points. It is no use trying to set any more tortuous course between the Governor's desire and his goal. If you let him remove after a hearing, who is going to say whether the hearing was satis-

factory or not? No one but the Governor. You may just as well let him remove in the first place. If you do not, you come back to the old cases of hearings which we have read of in the fables. We come back to the case of the wolf that stood upstream and asked the lamb down below what he was muddying the brook for. The lamb said "I am not muddying the brook, it runs from you to me." "Well, if it wasn't you, it was your father," the wolf said. Then there is the equally illustrative case of the old gentleman who said "Hans, what are you thinking about?" Hans said, "I am not thinking about anything." "Yes you are, you are thinking about your tam old father, and I will lick you for that any way." The scandal of our removals under that sort of situation is that a man is not only removed but he is slandered. The game of talk which is indecent starts up, just as in the old Puritan days. When the Puritans discovered corn fields that the Indians had with infinite labor cleared up, grubbed out and planted with corn, there came a meeting and the meeting " Resolved, that the earth is the Lord's and the substance thereof. Further resolved, that the Lord's substance belongs to His people. Further resolved, that we are His people." Now that is the line of action. If the Governor gets an eye on an office which is worth something, which is a particular one he wants, he immediately starts an investigation and all sorts of questions are asked of this man. He is harassed by counsel, and he is chased up and down and the newspapers slander him and finally enough has been done to satisfy the Governor that the young man he has in mind should be appointed. Let us cut all of that out. Let us come direct between the two points, and if we are satisfied that the Governor should remove, let him remove. If not, let somebody else besides the Governor pass upon the sufficiency of the reasons that are alleged. Now the people have, I am satisfied, from conversation and from things I have heard outside of these halls, a great deal more respect for the brains of this Convention, than they have for some of its motives. They have an idea that for years there has been a sort of feeling in the dark for their throats. This Convention is about to put the right of the Governor supreme, about to put the chief officer and the places from the head right on down through into his hands. We have attempted to put in his hands the initiation of all expenditures, the control through the appointive officers of all taxation, the increase of salaries for all favorites, the complete authority as to whether any bridge will be built, or what-not, shall be made.

The Chairman — Will the gentleman please suspend. The Chair calls attention to the hour and desires to know the will of the committee.

Mr. Ostrander — Mr. Chairman, I have but a word or two further.

Mr. Wickersham — I suggest that Judge Ostrander be allowed to finish.

Mr. Ostrander — In addition to that the intention is that the Constitution shall be made so difficult to change, that if before any man or set of men should have a proposition to be voted on, and accepted, he would become old and gray before it could be acted upon. Now, if you don't call that condition of things sewed up, as they say up in the country, with a log chain, I don't know what you would call sew. It confirms a belief, not without some ground, that back of and behind all this great scheme which fits together so nicely to provide eternal life and eternal power here, is the result of the brains of some combination of men who have interests to be protected by it and who have not the confidence to come into the open every year and give an account of the stewardship, and have the people pass on the qualifications of these officers. I will regret very much the time when the number of officers for which the people are called upon to vote and whose acts they are called upon personally to scrutinize, will ever be lessened. I think we have marked the beginning of the end of our scheme of government.

Mr. Wickersham — Mr. Chairman, I move the Committee do now arise and take a recess until 8:30.

The Chairman — Mr. Wickersham moves that the Committee do now rise and take a recess until 8:30. All those in favor say Aye, those opposed, No. The motion is carried and the Committee stands in recess until 8:30 o'clock this evening.

Whereupon at 5:30 p. m. the Committee took a recess until 8:30 p. m. of the same day.

AFTER RECESS—8:30 P. M.

(Mr. M. Saxe in the Chair.)

The Chairman — The Committee will please come to order.

Mr. Wickersham — Mr. Chairman, I suggest that the sergeant-at-arms be requested to ask the delegates in the lobby to come in.

The Chairman — Will the sergeant-at-arms kindly ask the delegates in the lobby to enter the chamber?

Mr. Quigg — Mr. Chairman, I rise to oppose this proposal, in principle and in its entirety. Up to this time in our work I am able to go back to my constituents and support what has been done here sincerely and sympathetically. If this proposal is adopted it will raise a doubt in my mind whether the great advantages that we have now attained, whether the fine, constructive work that we have now done is not more than offset by the dangers to which this proposal will expose us. I do not want that doubt; I do not want to be perplexed in my report to my constituents, so I am going to discuss

this question on the principle that is involved. But, first, I want to try to clear away some cobwebs. Mr. Chairman, some years ago, camping on the shores of a Canadian lake in the Far Rockies, early one morning my guide and I took a canoe to paddle to a stream, the entrance to which was very narrow, but where there were a great many deep holes in which the trout live. Just as we got to the entrance of this stream I saw a most bewildering sight. A gigantic cobweb, certainly 25 to 30 feet in circumference, attached to a tree on one side and a tree on the other, attracted my attention. The dews of the night before had gathered in little beads on this cobweb, it seemed a million of them, and the peeping sun had glinted every one of them so that there was this great expansion of cobweb with, it seemed, a million diamond gems. I was entranced by the sight. It looked beautiful. The guide paddling in the stern of the canoe just as we were about to enter the stream, checked the canoe, and I turned around to see what he was doing it for. He pointed forward, as I thought at the cobweb, but as he allowed the canoe to move along very slowly and penetrated the cobweb, there on a rock a little ways beyond I saw what he was pointing at—a great big mountain lion.

Now I see some cobwebs across the entrance of the stream into which we are adventuring and I suspect there may be a mountain lion beyond. First, before describing the mountain lion, I want to see whether I can clear away some of the cobwebs. The first cobweb is this talk that Mr. Tanner gave us this afternoon about the platform. Now, so far as ancient platforms are concerned, they will not bind me here. By ancient platforms, I mean any that was not made in contemplation of this Assembly. Don't talk about 1912 or 1913. I am thinking about now, and 1912 or 1913 will not bind my conscience. I was elected after that and under different conditions. As to the platform that was adopted, by the assembly of gentlemen who gathered in Saratoga in 1914 and who forgot to ask me to be present with them, I have only to say that they came together without benefit of clergy. They were not an authorized body under our laws. They were brought together after conventions had been discarded, and I attach to their opinion the value that I attach to the opinion of so many excellent persons who were brought unauthorizedly together, to whom I did not have opportunity to present my views. Now I know they were strong men; I know they were able men, but I am certain that they made a mistake in advising this proposal.

Mr. Tanner—Are you not aware that that was the convention that named the 15 delegates-at-large to this Convention?

Mr. Quigg—Oh yes; that is how you got here, and I got here from a popular proposal on the part of three counties. Now, Mr.

Chairman, in speaking of what that assembly of excellent persons, and I mean persons whose opinions should be respected, Mr. Tanner quoted in full this afternoon their remarks about the short ballot. He referred, fairly enough, to another paragraph of their opinion. I agreed with that other paragraph and I want to read in identical terms the words they said: "The delegates to the State Constitutional Convention should be at liberty to approach every constitutional question with an open mind and to vote thereon as their individual judgment and conscience may dictate to be for the best and permanent interests of the people of the State. This Convention disclaims either the right or the desire to embarrass the freedom of action which ought to belong to either delegate." Now that part of the opinion of these unauthorized gentlemen, I heartily approve and, feeling it my duty to the large number of voters who preferred to have me on the ticket than someone else, I must say here just what I think about this proposal. Now, there is another cobweb right in front of that and I blame the newspapers for it. I know that we live in an age of newspaper government largely, and are bound to. I recognize that the newspapers, with their tremendous circulations, can have tremendous influence upon public opinion, and I think they have got into the public mind the notion of what they have represented to be the short ballot. But what I say is that they have not represented it clearly and fairly. The people of this State are only now beginning to wake up to what this short ballot misnomer really means. They do not yet understand that it means that they are not to be allowed to vote for the officers that they have been accustomed to vote for. Their idea of it is that it is simply a more convenient form of voting, that it means a shorter piece of paper, a more convenient form of expressing their will. They are only now beginning to wake up to the fact that it means that their right to vote, their opportunity to vote for their officers, their chance to nominate them, is to be taken away from them. Only about now are they beginning to see that point, and the newspapers have kept it back from them. Now, Mr. Chairman, I know that is so, because as I go about in my own town since this subject has come up, man after man has asked me about it, and I have told him that it means that he is to vote in the State election only for the governor and the lieutenant-governor, and all other officers are to be appointed by the governor. That is not this bill; I am coming to that in a minute. But it is what Mr. Root said when he said that he was in favor of the short ballot, as the short ballot men understood it, and it is what the short ballot really means. Now, I have explained to them all that maybe some other officers will be included. The instant any voter I have talked with sees that it

means a limitation on his right to vote for the officers that he has been accustomed to vote for, he tells me that he is against it, and asks me to vote against it in this Convention. I say that it is not understood yet, and that if it becomes understood between now and the time when the people come to vote on this Constitution, there will be trouble for our Constitution. I do not say it will be defeated. Maybe there is not time for it, but it is a dangerous thing, and we have got to the point now where we ought to consider the dangerous things. Now, there is another cobweb ahead of that. There is pressure on this Convention to pass this bill. Not merely newspaper pressure. There is some of that, although, as I see the country newspapers, the Republican newspapers of the State, the clippings I am beginning to get from day to day, show they are raising questions about it; but there is a certain pressure. Now, added to that, comes another. I have seen Mr. Tanner quoted — and the quotation has gone all over the State — that he was going to bring to bear on this Convention all the power of his position as chairman of the Republican State Committee to pass this bill. Now he may not have said that. That makes no difference. He is Chairman of the Republican State Committee. He has done a magnificent work as Chairman of the Republican State Committee, a successful work, a work that gives us a great admiration for him. With the fervency of sincere friendship, I say, for myself — and I know for every other man in this Convention,— that I sincerely trust he will pick himself up out of what is probably a trivial trouble, but I know a tremendously annoying one, and come back to the Republican party to continue to be its chairman. He is chairman, he came here as chairman, and he was selected to be the chairman of the Committee on Governor and Other State Officers. It makes no difference whether he said it or not. Everybody knows that "the chairman of our State Committee" means this bill, and that means something to the chairman of every county committee, to the chairman of the town committee. It means something to every election district captain throughout the State of New York. So the pressure is there, whether he said it or not.

Mr. Tanner — Inasmuch as the delegate does not even state that he is referring to anything more than the persuasion of a rumor, I do not think that I will pay any attention to such a statement. The delegates of this Convention know perfectly well —

Mr. Quigg — I did not yield for a speech. If you have a question —

The Chairman —The gentleman has yielded the floor.

Mr. Tanner — The delegates of the Convention know whether

they have met this with anything but an open mind and that is a thing for them to determine.

Mr. Quigg — Mr. Tanner, you will have a chance to say that, of course. Then I read, and it has gone all around the State in all the papers, that Mr. Stimson says — Now I have got to pay my respects to Mr. Stimson, and they are respects. He has done here one of the greatest pieces of constructive work that has ever been done in the State of New York. There is no distinction that he might seek or which we could give him that he would not deserve for the work that he has done in this Convention. And yet here we are with something that blasts it all. He is quoted all over the State as saying that the office holders cannot possibly beat this bill, and that, if Mr. Root comes before this Convention and says what he said in Mr. Tanner's committee, it will sweep the Convention off its feet. Now, it makes no difference, Mr. Chairman, whether Mr. Stimson said that, or not. We all know if this amendment really gets into peril it will be expected, hoped for, desired, depended on by those in advocacy of it, that Mr. Root will take the floor. Now I tell you this. If he does, he will not lift here any "Cross of Gold" or crown of thorns. With my knowledge of him for thirty odd years, he will address all his remarks to the heads of this Convention, the intellects of it, and not to the feet of it. But still the suggestion is a bad one. The idea of pressure here is a bad one. Now I hope that cobweb is cleared away. Now there is another cobweb. Is there any demand for this short ballot? And if so, how did it arrive? Why, when Governor Hughes perpetrated on this State the iniquity of the direct primary, when he forced that through the Legislature, and every voter came to the polls with a piece of paper in front of him as long as two of these desks, and as wide, everybody was disgusted. Every one of you knows that if the people could vote to-morrow on the question of a direct primary, with the spectacle of that piece of paper in front of them, they would vote against it. What did they do when they came to the polls? Now I was there at my polling place. Why a Republican went over to the Republican captain and asked him for a marked ballot. The Democrats went over to the Democratic captain and asked him for a marked ballot. They took the marked ballots into the polls, and that is how they voted. Now the bringing up of that long piece of paper was the thing that generated in the public minds the notion of this short ballot, especially when the newspapers did not tell the public that the short ballot meant that they were not going to be allowed to vote for anybody. The public, thinking that it was merely a more convenient method of voting, of course, were in favor of it, since they had been confronted with that piece

of paper. Out of that circumstance, gentlemen, arose whatever demand there is in this State for a short ballot. I hope that cobweb is cleared away.

Mr. Betts — You spoke of Governor Hughes. I would like to clear him of the charge of passing this law. It was passed by a Democratic Legislature.

Mr. Quigg — Well, all right. Take it amongst them, just as they please, it is an iniquity that the people of this State resent. They want to come back, in order to have a ballot just as short as you want it, just as long as you want it — and it is very hard to please everybody — All you have got to do is to restore the circle and the emblem and then it can be as short as anybody wants and as long as anybody wants, and that is your opportunity to please everybody. A thing that does not often happen. Now I have come to another thing. This is not the short ballot, Mr. Tanner, and you know it. The short ballot is the election of a governor and a lieutenant-governor, the Governor to appoint the other officers. You put in the Attorney-General — really I do not know why. The Governor can pick a man that knows all about agriculture, if he can pick out a man that knows all about how to administer highways and to engineer everything, I do not see why he cannot pick out a lawyer. There are lots of us right around this circle. I do not see why you should have put in the Attorney-General. That means nothing. Then in your bill you were going to elect an expert accountant, whom you could hire for, oh, easily $2,500 a year, merely an expert accountant, who is to be called a treasurer. Then murmurs were heard from down the State, loud murmurs, too. There are fourteen or fifteen — I forget just the number — of murmurs from that locality right here now. They murmured loud. Then you see, there are those of us who object to the principle of the bill. And the murmurers from down below, from Kings county, raised such a loud murmur that it became possible that this bill might be beaten here. Now what happened? What did you do? You surrendered the whole principle of the bill without making it palatable to anybody who objected to it on principle. You did it two or three nights ago, when we began to hear that. Then in the next afternoon in the Brooklyn Eagle I read this: "The short ballot advocates have similar statements (that is, pledges) from the 168 members of the Convention and eventually all of them are to be made public. The material collected by these bodies is said to be in the hands of Republican State Chairman (not Delegate) — Republican State Chairman Frederick C. Tanner, and will in all probability be used as a whip to keep the delegates in line.

"The letters and statements handed out were as follows:

Brooklyn, New York.

The New York Short Ballot Organization, New York.

You may not be aware that I was a member of the Resolutions Committee at the unofficial (I thank you for that) Republican convention held in Saratoga.

I am pledged to support the short ballot plank in the platform there voted, which I shall endeavor to do to the best of my ability if elected.

(Signed) WILLIAM BERRI."

Other replies follow:

Jacob Brenner (another delegate-at-large): "I am in favor of the short ballot."

Mr. Steinbrink: "I do favor the short ballot."

Mr. Doughty: "I am heartily in favor of a shorter ballot than we have."

Mr. Adams: "I favor a short ballot for the State, but not for the county offices."

Mr. Buxbaum: "I favor a short ballot."

Mr. Bannister: "I have for years advocated the short ballot."

Mr. Linde: "I am in favor of the short ballot."

Mr. R. E. Weber: "I favor the short ballot for State and county offices." He went the limit and I like him for it.

Mr. Sargent: "I am in favor of the short ballot."

Mr. Brackett — Where is Brother Latson?

Mr. Quigg — The only Brooklyn Republican the short ballotters haven't on record is Mr. Latson; but he told me he was going to vote for it. So you see, Mr. Chairman, just as soon as Mr. Tanner had fixed it up with Brooklyn, he brings in the bill with confidence of support, and I suppose it will be supported unless those of us who are opposed to it on principle and those of us who really doubt its expediency, are wise enough to wait. It is not necessary to this Constitution, and the hope that I have is, that there will be enough of us to induce the Convention to wait awhile before we do it. Now, having cleared away some of the cobwebs, I want to get down to the sense of it. Mr. Chairman, there is nothing like this on earth. There is no State in the Union that has adopted any such thing as this. I have here the elective officers of every American State. I shall not bother you to read them to you unless I am challenged in what I say about them, but I tell you, Mr. Chairman, there is no such thing as this in any State of the Union or in the United States as a whole. It is absolutely unparalleled. Every State elects its principal officers.

Now if that statement is challenged, then I want another opportunity before the Convention. If not, I do not. Now, what is the situation in the National government? Are the members of the President's cabinet constitutional officers? Not at all. They are created by Congress. They can be removed by Congress. Congress can add to the number of them as it has in our memory, all of us, several times. Here you have got a provision that, for twenty years there shall be no other department added to the list you create, and you put them into the Constitution. The Federal Constitution contains no such provision. I can illustrate the situation in Congress — in Washington — very clearly, by recalling to your attention the form in which we address the President, or, in which we address a cabinet minister when we ask for information. To the President we say: "Be it resolved, that the President is requested, if in his judgment, not incompatible with the public interest, to supply to the House the following information." But, when in Congress we address a cabinet minister, an officer created by Congress, an officer whom they can remove at any time, we simply say: "Resolved, That the Secretary of the Treasury,"— no, I will put it this way: "Resolved, That the Attorney-General be, and he is hereby directed to supply to the House the following information." They are the instruments of Congress. They are simply assistants to the President, to carry out his direction, under the Constitution, to enforce the laws, and responsible to Congress. The responsibility to the President is merely a part of himself. They are responsible to Congress. Now, Mr. Chairman, with the budget that we have adopted we give to the Governor of this State almost absolute control of its expenditures. I applaud what you have done in that respect. I did not like one feature of the bill, but I knew that the bill as a whole was sound, because it enables the people to see what is being spent on their behalf. It enables them to understand it. It is intelligible to them. It has that great virtue. But, still, it is in his hands. What he ordains is almost certain to pass the Legislature, mostly as he ordains: except, as you know, for some additional things that he may veto, he has all the power.

Now you are giving him — except for a law officer, the anomaly of that is funny, I don't understand that, and for the gentleman from Brooklyn, who hopes to be, and properly hopes to be re-elected — you are giving him the control in seventeen departments of every functionary in this State. It was 152, I think Mr. Tanner said. Gentlemen, it is harder for a man who has power and who wants to perpetuate his power, to control 152 appointees than it is to control seventeen, when the real power is lodged in three. You might make the accident of appointing Dr. Schur-

man, somebody like you or me, who when he said you must do thus and so would say "No," "take back — take back the commission." With 152 appointments to make he might make a mistake in appointing one of us, but he would not make any mistake when he only had three to appoint, as he has in order to control the patronage of this entire State. Now, I want to illustrate that. He has the appointment of a person into whom is absorbed the powers of the State Engineer and Surveyor, of the Superintendent of Buildings, with all their places, and Mr. Barnes, if he is here, knows how useful those places are — into which person is absorbed power of the patronage of the canal — who is here from Rochester, who can tell us what that has been — he is absorbing into that person powers of the highway commissioner, with every county in this State wanting what is its rights, and all of us coming to him and seeking those rights. Remember what Mr. Smith said. He put it in the most picturesque way: "If any county in this State does not bring its delegates to me, I will send for them," Mr. Tanner, ought not you to have that officer elected? Do you want to create any such monster in this State as the Governor might be? We have got to provide as well for what he might be as for what he is now. Delegates of the Convention, do you want any such power to be placed in the hands of any one man? Won't you, at least, allow that officer to be elected? Now, what is the other one? The Department of Justice. All right. The Department of Finance you have given to Brooklyn. The Department of Taxation will do no harm, except to the taxers that occupy it. The Department of Accounts is all right. The Department of State has considerable patronage and ought to be elected just for that reason. This patronage ought not to be in the hands of the Governor. What is your Civil Service Commission? When its report comes in you will find that as many as twenty-five hundred places have been exempted and are exempted. Every commission says that they ought not to be, and then every commission goes on and exempts some more. They are all at the disposition of the Governor. Now, gentlemen, those are places if you are going to do this, that, at least, ought to be corrected. The people ought to have the right to vote on these places, these offices that contain large patronage. They ought not to be placed at the disposition of any man, if he is not just to the people of this State. And I do hope that this Convention will not do it on the mistaken idea that the people of this State understand what they are doing, for I warn you again, they don't. They do not yet know. They are only beginning now to wake up to the fact that you are taking away from them the right to vote.

Mr. Wickersham — Mr. Chairman, I confess to a feeling of some bewilderment. For years both of the great political parties have been advocating what is called the short ballot. Now, this evening, the last speaker tells us in all solemnity, the people of the State of New York are of the impression that the short ballot is merely an abbreviated piece of paper, and so low an opinion has he as to the intelligence of the citizens of the State of new York that he would have us believe that until this hour the inhabitants of the Empire State have been concerned with the physical proportions of a piece of paper. Mr. Chairman, I have a higher opinion of the intelligence of the people of this State. I think I can more correctly interpret their sentiments than the last speaker has done. I know that the members of the Republican party are laboring in no such cimmerian darkness, and I am persuaded that no other large body of the people are in the ignorance here ascribed to them. Mr. Chairman, the inefficiency of our State governments has been the subject of comment by students, American and foreign, for years past. That inefficiency has increased as increased burdens have been placed by a growing and complex society upon those governments, but men in both parties have analyzed, have studied and have advocated methods of meeting these conditions. At the convention of Republicans held in Saratoga in 1914, a convention brought together under all the solemnity of organization and of law, at which were present duly chosen representatives of the party from every part of the State, the temporary chairman addressed them in language from which I will venture to read a paragraph, because following his utterances there was adopted the plank which Mr. Tanner has read here. He spoke of the difficulties which were confronting us in our State government. He said: "The most obvious step towards simplifying the ballot in this State is to have the heads of the executive departments appointed by the Governor as they are now by the President of the United States under the national system, instead of having each one elected separately as they are now in the State. Still more important would be the effect of such a change upon the efficiency of government. The most important thing in constituting government is to unite responsibility with power, so that a certain known person may be definitely responsible for doing what ought to be done, be rewarded if he does it, and punished if he does not do it, and that the person held responsible shall have the power to do the thing. Under our system we have divided the executive power among many separately elected heads of departments; and we have thus obscured responsibility, because of the complicated affairs of our government, it is hard for the best informed to know who is to be blamed or who is to be praised, who ought to be rewarded, or who

punished. At the same time that the Governor is empowered to appoint the heads of executive departments and made responsible for their conduct, there plainly ought to be a general reorganization of the executive branch of our government, and the wasteful duplication of effort and the multiplication of officers under a multitude of expensive commissions ought to be obviated by making the regular organization of the executive department adequate for the performance of their appropriate duties."

Mr. Chairman, that statement was published throughout the length and breadth of the State. It was commented upon in every newspaper. It has formed the theme of many public discussions, and when the people of the State have given expression to their belief in the principle of the short ballot, they knew precisely what they were talking about. Mr. Chairman, every delegate in this Convention was furnished by the excellent commission appointed by the Legislature a year or two ago with a book, one of the most thorough, most interesting and most instructive treatises on government ever prepared and published. For the first time in the history of any State a complete survey, to employ a modern term, of the government of the State in all of its agencies, was prepared and placed in the hands of the public, and particularly of the delegates assembled to consider what changes ought to be adopted in the Constitution of this State. We all had it. We all examined it. Some of us have studied it more or less diligently, but the opening page of it presents to us our duty, lays before us the problem that confronts us more clearly than any document I have seen. This is the treatise on the organization and functions of the government, prepared by the Bureau of Municipal Research, and published by the Department of Economy and Efficiency, which, I regret to say, was abolished by the Legislature of the State just as it had justified its existence by bringing forth these first fruits. After referring to the character of the publication, the compiler said that "it shows that the government of the State of New York comprehends 169 departments, bureaus, boards, institutions, commissions and offices, and that they supervise or regulate practically everything there is in the State. Many of these 169 agencies of government have been created since the last Constitutional Convention in 1894. In addition, the powers possessed by the agencies then in existence have been enlarged and increased during the twenty-year period. In numerous instances conflicts of jurisdiction have resulted, and it has been realized within the past few years that simplification and concentration are necessary. The entire structure of the State government as it now exists may be said to have grown from year to year rather than to have been builded according to any studied

plan of scientific or economic needs. As a result, duplications and inconsistencies are found in many branches of the government." Mr. Chairman, I shall not weary the delegates with a further reading from this description, but there is the problem that has confronted us since we came together in this Convention. Now, Mr. Chairman, what has this committee done? It has, Mr. Quigg says, presented a plan of government unlike that of any state in this Union. Thank God it has. It has placed the Empire State as the first one of the American commonwealths to deal intelligently, scientifically and courageously with this vast, complicated, inartistic, unscientific, expensive, wasteful system of government that has grown up in our midst. It has dealt with two prime theories. First, it has taken all of the functions of the State government and distributed them among a dozen departments of government, and it has provided that no further department shall be created, and that all of the agencies of the State government shall be apportioned by the Legislature to and among those various departments. Then it has —

Mr. Stimson — In order that the challenge of Mr. Quigg's might not go entirely unanswered, as I am afraid it might, by your statement that this was the first time that any such plan of government was proposed; isn't it a fact that in the State of New Jersey, where the certainty and efficacy of its justice is proverbial, the short ballot exists to the highest degree, and the people of New Jersey only elect their Governor and allow him to appoint practically every other office in the State?

Mr. Wickersham — Undoubtedly true, Mr. Chairman; but what I meant was that this State, this Convention is the first one, I believe, in any state to present a careful scientific rearrangement of the government of the State, regardful of tradition so far as it was essential to regard tradition, but courageous in mapping out a plan of government irrespective of what other states might have done.

Mr. Quigg — Mr. Stimson, the Governor in New Jersey is elected by the people. The State Treasurer and Comptroller are appointed by the Legislature. The Attorney-General and Secretary of State are appointed by the Governor, so that there is not every office appointed by the Governor.

Mr. Stimson — I may have been misinformed. Are there any other officers in New Jersey than the Governor who are elected by the people, State officers?

Mr. Quigg — I did not say there were. I said this was an anomaly.

Mr. Wickersham — Now, Mr. Chairman, at the present time, aside from the Governor and the Lieutenant-Governor, the Secre-

tary of State, Comptroller, Treasurer, Attorney-General, State Engineer and Surveyor are required to be elected.

Mr. Cullinan — I would like to ask you a question: In your remarks you have stated that the State government in the city of New York is extravagant and in other words wasteful. Can you in the course of your remarks tell us what of the elective officers are guilty of conducting their affairs in a wasteful manner?

Mr. Wickersham — Mr. Chairman, I am not here to indict anyone or any officer. I am here stating facts of the government of the State that are known to every school-boy and are certainly known to this assemblage of delegates. Mr. Chairman, as I say, this Committee with a restraint and conservatism which I confess goes further than I should have done, recommends the election, aside from the Governor and Lieutenant-Governor, of the Attorney-General and Comptroller. I confess that personally I see no reason why the Attorney-General should be elected, but I know there are a great many delegates who differ with me in that regard and the Committee making this report has very properly respected the feelings of many delegates in providing for the election of that officer. It has somewhat shortened the list of elective officers. Personally, I should have liked to have that list shortened still further, but that is my individual view and was not, I take it, the opinion of a majority of delegates with whom the Committee properly and necessarily conferred. Yes, Mr. Wiggins.

Mr. Wiggins — Would you object to an interruption?

Mr. Wickersham — No, not at all.

Mr. Wiggins — I observe in one of the minority reports filed by Mr. C. Nicoll that he advocated the election of the Governor and Lieutenant-Governor only. May I assume you would be glad to now join in having these two officers, the Attorney-General and Comptroller, who are to be elected in this bill made appointive?

Mr. Wickersham — Mr. Chairman, the opinion in this body ranges from that expressed by Mr. Quigg to that expressed by Mr. Nicoll.

Mr. D. Nicoll — Not this Nicoll.

Mr. Wickersham — No. I have been so accustomed when I hear the name "Nicoll" to look at my friend Mr. D. Nicoll that I naturally turned to him when I said Mr. Nicoll. I say that the opinion of the members differs, and I presume the committee in preparing and submitting this report expressed what it was believed would be supported by the body of the delegates. We each individually have our preferences as to some particular thing in government and when we find we cannot carry with us a majority of our fellows, we yield, unless it is a question of vital principle, we yield our individual judgment to that of the majority.

Now, certainly, nobody whoever advocated the short ballot can conscientiously object to this report upon the ground that it appoints too many officials now elective to be hereafter appointive. Of course those who would like to have more officials appointed than are recommended will object to the report on that ground. As to the particular powers and duties that may be conferred upon them with one or two exceptions, the committee, it seems to me, have very wisely left that to the Legislature. The essential thing is that the Governor shall have the real power which should go with real responsibility, and that the functions of the State government should be grouped under appropriate departments, properly correlated, and that this heterogeneous mass of distributed and irresponsible power should come to an end. How is it possible that anybody who has stood up before his fellow-men and advocated the short ballot should fail to say, "Well, I will go with you as far as you go. I would like to go farther, but certainly, to that extent, I am with you." Delegate Smith in speaking of this measure criticised it in some details. I will not stop to discuss those because we are not discussing details of the bill at the moment. It may be that he was right in some of the principles. That will be for further discussion. But the fear that you are going to give to the Governor the power which the chief executive must have if he is going to reform this system of irresponsible and wasteful government, I confess I do not share. You may talk about the power which the Governor has and the power which the Governor might abuse. The institutions of the State cannot be founded upon a distrust of the exercise of power properly safe-guarded as it is here, and with the responsibility to the State, always capable of control through the exercise of the right of impeachment. Mr. Chairman, I commend the prudence of the committee in presenting this report rather than an extreme statement of the views of the most extreme advocates of the short ballot, in order that we may come together on this at least, whether we go farther or not.

Mr. Wagner — I am not a member of the majority party in this Convention, so I do not want to be one of the members of the party that is helping to rock the boat. I want, rather, to help, if I can, to steady the boat. I was rather surprised to hear a few moments ago of the extraordinary methods which were being used, according to authenticated rumor, to drive men in line, members of the Republican party, to carry out what is said here to be a plank of the Democratic platform. The anxiety of my colleagues on the majority side to stand so firmly upon declarations of that Democratic platform is an evidence to me that there is a chance of reform even in the G. O. P. Whatever I say now I hope will be

taken in criticism of the measure, with a desire to help perfect it. Even though in all respects it does not jibe with my ideas, and even in some respects with principles that I would like to adhere to, I want to have this Convention bring out as effective a provision as possible so as to receive the endorsement of the people. I think I can suggest two reforms particularly which upon mature consideration and deliberation will appeal to the members of this body. It may be possible, if partisanship is forgotten so that we lay aside the matter as to which particular member of this Convention will receive the credit for a particular reform, that it will be accepted by a majority of the members of this Convention. Mr. Tanner said that this proposal was to do away with ripper legislation. Upon that point I think he is absolutely mistaken. This has nothing to do with ripper legislation, so far as doing away with the temptation. It will obviate, from that standpoint — and I am not complaining because of that — the necessity for ripper legislation. What has ripper legislation been in the past? It has been a desire to secure the patronage of an office, the official term of which would not expire during the incumbency of the Governor of the State. In order to terminate that term, so as to secure that patronage, an act is passed to abolish the office or to change the organization of the office and thus secure the appointment of its head. This is all done away with here, because you provide that the incoming Governor can remove at will and make whatever appointment to the head of the department he pleases. Under that system with the change of every administration there will be a change of the head of every department, if the change is a political change, and ripper legislation will not be needed. Now I am not going over again the departments to which Mr. Smith so well referred in his criticism. It seems to me there is no need of the department of the treasury at all. Occasionally I think a little frank confession on the part of all of us is a good thing. I have a suspicion that the Department of the Treasury was left in there to appease somebody and not because it was a necessity, because, as it was in the first report, it was a tremendous office. You gave him nearly all the powers that are returned to the State Comptroller — and I will speak of that in a moment — and in addition to that you gave him all the powers of the Department of Taxation which you now make another separate department. Now, hadn't there best be a confession here that that was done in order to get the bill out of committee or to appease somebody? If it was, let us aid the committee after they have secured the report of the bill upon the floor by disregarding those purely personal considerations and striking from the department the distinction of being a constitutional

office, without any powers to exercise, practically, except those of a mere clerk. I differ with my "partner," Mr. Smith, in the question of keeping the Department of Accounts. I think the greatest reform in conjunction with this measure, in order to make it an effective governmental reform — I do not mean a political reform because I can appreciate that politicians will not like my suggestion — would be to make the Commissioner of Accounts a real, effective, investigating officer, free and independent from any executive influence whatsoever. As you have it now, what does it amount to? You give the power to the Governor to appoint and he may remove at will, so that that investigating commissioner is at the direction of the Governor and he will investigate such departments as the Governor wants investigated and keep away from the departments which the Governor wants left alone. I was very glad to hear General Wickersham make a confession because, coming from so distinguished a citizen as he is, I regard it as a great compliment paid to the Democratic minority of the last session, and the majority of the Legislature of two years ago which created the office, when he said, that it is conceded by all those who have thought about our State government that the abolition of the Department of Efficiency and Economy was a grave mistake, and it was. If you will look at the investigations which Commissioner Delaney made at a time when he was free from governmental influence, when the Governor who had appointed him had passed away and he felt free and independent to act in behalf of the government without any other concern, you will see that he made some recommendations which are the most valuable that ever have been collected by any department in this State, and that is conceded by anybody who has taken the trouble to look over the report of his work. Gentlemen, think about this anyway between now and the time that you make your reforms. Let me say this is not original with me. This was suggested by President Lowell before the Finance Committee when he referred to the English system. The idea struck me at that time, because I have always been convinced that the Department of Efficiency and Economy was one of the best things ever done in this State government, and that is why I fought so strongly against its abolition. I asked President Lowell, "Would you have this investigating officer appointed by the executive?" He said, "No." I think Mr. Stimson will remember that. "No, make him an independent officer." I said, "Well, how would you provide so as to make him independent?" He said, "Either have him elected by the Legislature or by the people, even, if you want to." I am not going to suggest, because I am afraid it will not receive any great favor here, and perhaps it is not necessary that he should be

elected by the people; but I do say, give him power to investigate after the thing is done. I do not mean the power of auditing claims before, but the power of investigating departments. By that I do not mean investigating in a partisan spirit to send someone to jail, but to keep the accounts regular, to see that moneys are expended for the purposes for which they were appropriated, to systematize our method of purchasing throughout the departments. Mind you, in the State to-day, there is no such department as that. There is no examining of the accounts of the different departments. There is no systematizing of the method of purchasing materials. There is no way of centralizing the purchase of materials for the departments so as to secure the efficiency and economy throughout our State. There is no greater extravagance — and all who have studied this subject will agree with me — than this lack of system and co-operation between the departments in the purchase of materials. Another extravagance is the use of funds for purposes for which they really were not intended to be appropriated.

I would provide — and I propose to offer an amendment to that effect — that the commissioner of accounts be selected by the Legislature, that his term be fixed for, say, six or eight years, that he can only be removed upon charges by the Legislature, so as to make him an independent officer. I say to you now that that will be one of the most beneficial governmental agencies in this State. In the closing hours of the Department of Efficiency and Economy every one agreed that the commissioner was doing such remarkably effective work that it was a serious mistake to do away with him. I have sort of a report of the investigations which he made into only one branch of our government, namely, into our State institutions. He went into the details of their management, and the disclosures which he made are remarkable. This report was used by the last Legislature, by the way, in making their appropriations. What happened? The moment his office was abolished, the gentlemen having charge of these funds, which are appropriated in lump sums, began to do with them just as they pleased. Why, he had one case where a dentist was paid out of a fund for amusement purposes. It was discovered that one of the institutions had asked for $50,000, for the extension of a building for inmates. The commissioner investigated that matter. It was several years after it had been done. What did he discover? Why, that the house built was a house for the superintendent of the institution. It cost $47,000 to build a house and furnish it for the superintendent himself. The servants of the house were attendants of the institution who ought to have been attending the inmates, in behalf of the State. Those are

matters of detail which an investigator, a commissioner of accounts, independent, one who cannot be called off by the political leader of the particular section affected, can look into. If these matters are disclosed, you have no idea of the economy that can be exercised in this State, and also of the efficient service you will get. That is an amendment which I propose to offer at the proper time and I hope in the meantime that the members of the Committee and the other gentlemen who are interested in this measure will give this serious concern.

Now the next matter I wish to speak about is the department of finance, the Comptroller's office. I am rather glad to see that the powers which were originally taken away from that officer are returned. I have a suspicion what the motives were. I know I am never going to make myself popular in making partisan criticisms, but I shall assert my right to do so even though it won't be the most welcome thing in this Convention. I rather think it was an unworthy thing to do. If we stand for the principle that this officer should have a particular function, and the rumor be true that the change was only made to satisfy some delegates in this Convention who took the stand that they would not support the reform unless the patronage in this particular office which had been taken away should be returned, then I say that those motives are unworthy and the members who took part in it justly deserve the criticism of the rest of it. I am willing to have the powers rest in the Comptroller's office. I believe it was a mistake ever to take them away from the Comptroller. But if you give him this power and make him an independent officer, which you say he should be, an effective independent official having charge of the finances of the State, then provide in your fundamental law that the Legislature can never take those powers away. You have provided in this measure that other officers who are to be appointed by the Governor can never have their powers taken away by the Legislature. Why do you not provide that the function which the Comptroller now has, a most important function — and I hope my amendment that I propose to offer will be accepted, that the State Comptroller shall audit and settle all accounts owed to or by the State — why do you not make that an irrevocable function, if I may use the term, of the Comptroller's office, so that when he is elected by the people upon the ground that he is their guardian of the treasury, no Legislature can subsequently come and take those powers away from him because, forsooth, the Governor, ambitious as he may be in having the Legislature at his command, may so desire? Let him be the man to stand in the center and say "No, the State's money will not be used for any purpose except it is legal and permitted by

our fundamental law." Take away from the Legislature the power to ever reduce his functions. Now, we come to the department of public works. Let me say something about the platform. I subscribed to that platform. I think Mr. Tanner gave me more credit than was due. I was a member of the committee of three that drafted the platform. I was not as enthusiastic about that particular provision as some other members of the committee, but I agreed that, under the present functions, the Treasurer and Secretary of State, and perhaps the State Engineer, should not be elected. Mr. Blauvelt, who is a member of this body, was a member of that sub-committee, and perhaps did more work on it than I did. We worked together, at any rate. Let me say, however, that we never had in mind that the Governor should create or have the power of appointment in any such office as you are now proposing to create in the Department of Public Works. If we had, in my judgment — and I have asked Mr. Blauvelt's view about it — we certainly would have provided for his election.

If we are to make the ballot short, I would rather appoint, if you insist on keeping us down to four officials, your Attorney-General rather than appoint an officer with this tremendous power, a power over things which concern directly the people of the State. Why, I think, so far as a matter of exercising power is concerned, he is more powerful than the Governor. He has absolute control of the construction and maintenance of all our highways, and we have appropriated a hundred million dollars, as you know, or at least provided for a hundred million dollars for the construction of our highways and their maintenance, running all through this State. We provide for absolute charge of the construction and maintenance of our canals, which affects very many sections of our State; of all of the engineering in the entire State, including all of our public buildings, and their construction and maintenance. Why, there never was an officer in this State, except perhaps the Governor himself, and maybe not even the Governor, with the extraordinary power which you give to this particular official. I hope no one will say that the people will not be interested in the selection of this particular official, as they are not interested, as some say, in the Treasurer, because of his ordinary functions. Can you imagine our up-State representatives not being interested and the people, I mean, the people of the different localities, not being interested in the officer who is to have complete charge of their State highways? Why, I think that if that matter was submitted to the people of the State, especially the upper section who get the money — we in New York don't get any of this money — why, they would, ninety per cent., I believe, would vote in favor of the selection of this official.

And when you take into consideration the construction of all our public buildings, that means all our institutions, all our asylums, there is one commercial side, then there is the humanitarian side.

There are a great many people in this State interested in those institutions, and they would be particularly interested and concerned and keen about the official at the head of the State government who was to have charge of the supervision and control and the construction of these public buildings. And I want to say to you that I would rather have you take one of the officials, as the Attorney-General, if you will, if you insist that only four shall remain in here, and make this officer an elective official, and you will get the approval of the people of the State. Now, don't let us, either, say that there is no politics if we put these departments under the complete charge of the Governor. Now, I don't want this taken as a personal reflection, because all governors are guilty of it, and the present Governor is one whom I esteem very highly and I consider him one of my personal friends, although we are politically opposed to one another, and yet what happened at the last session of the Legislature? He sent in a most urgent message early in the session that the Highway Department must be reorganized, that a one-headed commission is a mistake, that we must have a three-headed commission, that being a continuing and unvarying function of government, that we should have the term so fixed that there should always be somebody in office in the different administrations who was acquainted with the work of the preceding administration so that the wheels of the department will go on undisturbed, and that was a reform that he insisted should be enacted by the Legislature. I at the time made a few suggestions — in it he said that the office had been used no doubt throughout the State for public purposes and political patronage, and I had the audacity to say that I thought that the reform that was asked for was not so much to change the system as to get the office. That, at the time, was denied, and I was denounced for injecting politics into this worthy reform advocated by the Governor.

A week or two elapsed and we discovered that the Commissioner then in office resigned and immediately an appointment was made of a college classmate of the Governor, a former Democrat, to the office and the reform that was urged so much, that there should be a continuity of service and a three-headed commission was quietly lulled to sleep and never heard of again. I only give you this to show that there is always the temptation of politics in these great departments from the standpoint of patronage and power, and there always will be; and I think the people will be better satisfied if they have the right to select an officer who will

exercise these very extraordinary and very important functions of government, and for the same reason that you say in your report, that you want to make the Comptroller independent because the functions he has to exercise are so important that he should be independent, recognizing the principle that election makes an officer independent, and for the same reason that you urge that the comptroller should be elected so as to be independent, I say elect this superintendent of works, with his extraordinary powers, because he must be independent, and responsible to no one but the people themselves. Now upon mature reflection I am satisfied, I believe I am sure that you will adopt my suggestion as to the commissioner of accounts; and upon more mature reflection that if you will not substitute you will add the Commissioner of Public Works as an elective officer. There are other detailed amendments which I will not go over now, but with these amendments which are fundamental and which I think will make this a workable plan, you will go before the people with a substantial reformation over our present system. I am going to pass over the question as to whether these different functions should be put into the Constitution. I think the sentiment here is that that should be done, and I am perfectly willing to accept that as the plan of this body. With these reforms you will, I think, get a good deal of commendation for this proposal.

Mr. Green — Mr. Chairman, and Gentlemen of the Convention: I rise with a good deal of reluctance to speak this evening on the question before the Committee of the Whole. I occupy a rather peculiar position because the department I am set to take charge of later on is about the only one not recognized as a constitutional office and I assure you that whatever I may say will be with no ulterior motives. I wish to make the same statement I made to Chairman Tanner, my esteemed friend, that if it can be shown that my resignation will save to the State of New York the salary and it can be conducted, as I believe, by others as well as by me, or better, and with that saving to the State, my resignation is in the hands of the Governor to-night, and my word is as good as any man's bond. I have not the slightest idea of charging the Committee or its chairman with any malice, with any spiteful action towards me, because I have been misbehaving myself or anything of the sort. I believe that from the standpoint of the Committee it has undertaken to do what will be for the best. I wish to get squarely before you in whatever I may say, because I shall say it in all earnestness and will not endeavor to overdraw one line. You will remember back about August 15th there were charges and countercharges of influence being used by Chairman Tanner of the Republican State Committee and also the Chairman of this Committee to get the Governor of the State of New

York to use his influence to bring into line his appointees. I was interviewed by several newspapermen, and fearing they might unintentionally misquote me, I gave out this interview, which went into several papers. I wish to read this into the Record not for my own protection half so much as for the protection of Chairman Tanner and the Governor of the State of New York: "George E. Green, Delegate from Broome county to the Constitutional Convention, denied yesterday that either Governor Whitman or Frederick C. Tanner, chairman of the Republican State committee, had attempted to dictate to him relating to matters before the Convention, as charged in recent newspaper stories. Mr. Green said that, in a recent conversation with Governor Whitman during which he endeavored to obtain his views respecting a proposition before the Convention, the Governor explained that he had not considered it any part of his executive or personal business to attempt to interfere directly or indirectly with anything pertaining to the Constitutional Convention. 'Pressing my query for his confidential opinion as to the position I should take, and supplementing it with a statement that, naturally, I would not willingly wish to pursue a course openly antagonistic to his known views upon plainly debatable questions,' said Mr. Green, 'the Governor amplified his position with the emphatic statement that, in making his official appointments, he had not considered the question of policy or politics, or any future control or suggestion on his part to such appointees, other than relating to the proper conduct of the important duties entrusted to them, and that such appointees are free moral agents to exercise their own opinions by voice or vote on any subject, and to the fullest extent without fear of offense or favor to him. The Governor expressed only the one desire, that the deliberations of the convention should be unrestricted and impartial, resulting in the proposal of wisest amendments for the good of all of the people of the state, and in keeping with the best traditions and constructive record of the Republican party. So far as Chairman Tanner is concerned, I have not received any suggestions, orders or instructions from him directly or indirectly, in any manner whatsoever, nor have I, at any time, been consulted by him or by his committee as to any opinion I may hold on any subject.'"

That is a pretty broad statement and it is absolutely true, as Chairman Tanner will bear me out in saying because until Saturday last, after the introduction of the bill, neither from him or any member of his committee did I receive any suggestion for an opinion and I inquired of the present Excise Commissioner and those in charge of the office and they tell me no inquiries were made there. Back in June, Delegate Whipple introduced a proposed amendment to make the office of the department of excise

a constitutional office, and at that time I did appear before the Committee on Governor and Other State Officers at a public hearing. I am not sure of the date. I hold in my hand a paper then printed and placed before the committee, which I believe. Before I proceed further I want to get a little of the cobweb off of my intellect as to where it is proposed to place the present Excise Department under this new arrangement. One tells me it goes to taxation. Another says it is a police proposition, and then I read here, "at the session immediately following the adoption of the Constitution, the Legislature shall provide by law for the appropriate assignment of all civil, administrative and executive functions of the State government, except those of assistants in the office of the Governor, to the several departments in this article provided: Subject to the limitations contained in this article the Legislature may from time to time assign by law new powers and functions to departments, officers, boards or commissions continued or created under this Constitution, and increase, modify, or diminish their powers and functions. No specific grant of power herein to a department shall prevent the Legislature from conferring additional powers upon such department. No new departments shall be created hereafter. Any bureau," — and then we go into this bureaucracy proposition and, to clear up my mind, where does the department of "boozology" land? If any one can tell me I will be obliged. Now in all seriousness let me read to you a paper presented by the present counsel to the State Excise Department before the Committee, in favor of the Whipple Proposed Amendment, and I ask your careful consideration of this, because at that time I did not know quite as much about the department as I do today. I was in the work of helping to do all I could in favor of the Raines Law, the best law at that time passed, and the best law we have had regulating the liquor traffic and I bless the memory of my old friend John Raines for his constructive ability in bringing about a law like that; to say that it could not be improved would go perhaps too far, but it is the law. On March 23, 1896, about two years after the adoption of the present Constitution, the Legislature of this State framed a law for dealing with the liquor traffic through a department of the State government. Prior to that time the matter had been under control of local boards, and results had been far from satisfactory. The "Raines Law," so-called, was the result of careful investigation and study, and before its enactment was the subject of general discussion. The plan was well worked out to meet the peculiar conditions existing in the great State of New York, with its metropolitan and cosmopolitan population. For about nineteen years we have had a State Department of Excise. Although under the tax provision of the law, a large revenue is produced —

And let me say, gentlemen, turn to your books and you will find that since 1902 there has been produced from this law in excess of eighteen million dollars per annum, and this year it will provide greatly in excess of that — although under the tax provision of the law a large revenue is produced, the Court of Appeals has held that the law is not primarily a tax measure, but is framed under the police power, to regulate and control the business of dealing in malt and spirituous liquors. Some important amendments have been made to the original act, but the essential plan has not been changed, and it has become the settled policy and established will of the people to deal with the liquor traffic as a matter of State control rather than of local administration. The liquor tax law has been tested in every respect, as a system for regulation and control through taxation and registration, and the State Commissioner of Excise, under such a law, has become an important administrative officer. His powers represent all the people of the State, both in executing the law with respect to actions and proceedings taken against violators, and in the matter of improving conditions, by general supervision, co-operation with local officials, and recommendations made to the Governor and Legislature. He has become a State officer, with undivided power and responsibility, acting with legislative authority and executive approval. The department which he controls and directs has become an essential and important part of the State government, as firmly fixed in its relation to the people of the State as the Department of Public Works or of Conservation. After the test of nearly twenty years, during which time abundant evidence has been produced to prove that excise conditions have steadily improved, there can be no question concerning a continuation of the system. Public interests are safeguarded at every point by provisions protecting householders, schools, churches and public institutions. In towns, the people are permitted to fix their status by local option. Certificate holders are required to give a bond to the people, conditioned for the legal conduct of their business, and, in addition to the forfeiture of the bond on account of a violation, the certificate holder may be legally deprived of his rights as such. Whenever a condition arises which demands further restriction of the traffic, it may be easily provided by the Legislature through amendment.

The law as it stands has been carefully construed by the courts in all its essential provisions, and we now have what may be legally termed "settled law." These more important features of the liquor tax law are mentioned to indicate that the department of excise should be placed on a firm foundation under the Constitution. The head of such department should be recognized as a Constitutional officer, in charge of a great work that has been

laid out by the people of the State, under a system that is now firmly established. Establishment of the Department of Excise on this basis, and recognition of its chief official as a Constitutional officer, would naturally tend to command the confidence and respect of the people generally, and wholesome regard by those engaged in the liquor business, for the system which has been so successfully carried out under the Liquor Tax Law, and which, as we have observed, has become the settled policy of the people of the State of New York.

Now, gentlemen, just a word. I wish to say to you in all seriousness that in my humble judgment no department ought to be in the Constitution more than this very department, and I say it without any personal feeling and without any ulterior motive on my part, because as I stated, I am willing to stop and hand in my commission at any time. If you gentlemen could have received the letters that I have received from all quarters; if you could have had the suggestions that have come to me on this floor and elsewhere of violations of the law and which have been kicked about, and made a political football, and where men are coming to you and looking to you to do something about it, you would soon make up your mind that this department ought not to be made a political proposition, or to be kicked about in the political field, at the behest of the Senate and the Assembly, at the behest of the party workers, democrats and republicans, you would appreciate my views, and I say to you that in all fairness to the State that it ought to be made subject to the Constitution as much as any other department. Now, gentlemen, I wish to say just one word further; if there is anyone who looks upon me as having attained that position as the result of my own solicitation, I wish to assure him that that is not so. I want to say to you that I do not believe that the present Commissioner of Excise has begun any persecution, and if the prosecutions are right they will be continued by me to the very end, and they shall not be a political kick-about in this office, if I can prevent it, and I merely appeal to you that it is only fair and decent treatment to use this department as you have other departments that are represented upon the floor. For instance, my good friends that are in the Insurance Department, Banking Department, Public Service Department, Taxation Department, and the State Attorney's office, are members of this Convention the same as I am. If there is anything personal you can get me very quickly, because my resignation can go into the hands of the Governor any time he desires it. Now, aside from that, I wish to be absolutely fair with you as to why I disfavor this proposition. I am not in favor of the short ballot so-called. I believe that the people have not understood the situation. I believe that the short ballot associations which have been

kept up by a great deal of money and handled by smart gentlemen, gentlemen with bright intellects, have produced the situation, and light is gradually dawning in the minds of the people of the State. I am here representing the 39th Senatorial district. I have until recently made no suggestion to my constituents as to where I stood on this proposition. I have written letters to several hundreds of them. I have received their replies and I will be fair and frank and say to you that five out of every six letters received, and more than that, are against the short ballot. The letters which I have sent out read:

"My dear sir: Will you please do me the kindness to advise by return mail whether you believe the voters prefer to elect all of the present State Officers, or would they rather have the 'short ballot' and have the Governor appoint part? These proposals are before the Convention, one to elect only the Governor and Lieutenant-Governor, and the Governor to appoint the rest, the other to add Comptroller and Attorney-General to the elective officers and have the Governor appoint the balance of State officers now elective. In fact, there are other proposals extending to the voters the privilege of electing a greater number of state officials which at present are appointed by the Governor. I have an open mind on the short ballot proposition and am only seeking to obtain the unbiased opinion of a few of the average voters in my district. If you prefer your answer will be regarded confidential. Thanking you in anticipation of your kindness, I am, very respectfully yours," and then I sent another letter, and I enclosed an addressed stamped envelope to get a quick reply, and this is the letter I sent:

"My dear sir: Please do me the kindness to answer the following questions on this sheet and return same by first mail in inclosed envelope: 1st. The 'Short Ballot' which of the following plans do you personally prefer respecting selection of State officers: permitting voters to elect the Governor and Lieutenant-Governor and the Governor to appoint balance of the State officials? 2d. Second form of 'Short Ballot' permitting voters to elect Governor, Lieutenant-Governor, Comptroller and Attorney-General, the Governor to appoint balance of State officers? 3rd. Entire State ticket consisting of Governor, Lieutenant-Governor, Secretary of State, Comptroller, Attorney-General, State Treasurer and State Engineer and Surveyor, to be elected by the voters as heretofore? 4th. Do you prefer that the Judiciary should be elected or appointed? Quite aside from your personal opinion, which plan do you believe would receive support of the most voters whom you have heard express opinions? Further expressions or reasons for your views will be appreciated. I have an open mind on the subject and wish the unbiased opinion of average voters in the dis-

trict I have the honor to represent. If you prefer your answer will be regarded in confidence. Thanking you in anticipation of your kindness, I am very truly yours."

I sent those letters to voters, members of the Democratic and Republican committees, and men in Delaware and Broome counties, and I did not select men who would say what I wished them to say, and I am ready to show to my associate delegates to this Convention or to the President of this Convention the letters to which I refer. I made short extracts of some of them, and I say to you that better than five to one of the replies received are against the short ballot, and I wish to read some very short extracts from some of them which show what they think about it. This comes from a Democrat, I think, a member of the county committee: "I personally believe in leaving most questions to the people as all the people will not make a mistake all the time, and for that reason I prefer the third plan for the people to elect the State officials, as we have been doing. Let the people elect and I believe that the majority of the people to whom I have talked on the matter are of the same opinion."

Mr. Wickersham — Mr. Chairman, the hour of ten-thirty having arrived, I move that the Committee do now rise, report progress and ask leave to sit again.

Mr. Green — Will it be understood that I can finish my remarks to-morrow?

Mr. Wickersham — I cannot pledge you any time, sir, but I presume the Chairman will recognize you to-morrow.

The Chairman — You have heard the motion of Mr. Wickersham, that the Committee do now rise, report progress and ask leave to sit again. All those in favor say Aye, opposed No. The motion is carried. (The President resumes the Chair.)

The President — The Convention will come to order.

Mr. M. Saxe — The Committee having under consideration Proposed Constitutional Amendment, General Order No. 59, print No. 831, introductory No. 716, reports progress and asks leave to sit again.

The President — The question is on the motion to grant leave to sit again. Those in favor will say Aye, opposed No. The leave is granted. The hour of 10:30 fixed in the rule having arrived, the Convention stands adjourned until ten o'clock to-morrow morning. Whereupon, at 10:30 p. m. the Convention adjourned to meet Saturday, August 28, 1915, at 10 a. m.

SATURDAY, AUGUST 28, 1915

The President — The Convention will please be in order. Prayer will be offered by the Rev. J. Addison Jones.

The Rev. Mr. Jones — Let us pray. Oh, Thou, who art the everlasting light, let the sense of Thy presence, like the shining of the sun, brighten our path this day. For the renewal of life with the return of the day, and for Thy countless gifts which make our hearts content, we bring to Thee our grateful praise, and we pray that Thou wilt make us wise concerning the things that are right and good. May we be men of the clean heart, and of the courageous spirit. Teach us that it is better to give than to receive, to minister than to be ministered unto. Deliver us from all those ruinous ambitions which seek merely the fickle praise of men, and endue us with the spirit of understanding and of might, that we may be of some real use to our fellow men. Enlarge our souls, that those who love us may have more to love, and abide with us always in purity and in power, that we may serve well and worthily our generation before we go the way of all flesh. And to Thee we will give all the praise. Amen.

The President —Are there any amendments to be proposed to the Journal as printed and distributed? There being no amendments proposed, the Journal stands approved as printed.

Mr. Wickersham — Mr. President, I suggest the absence of a quorum and ask that the roll be called.

The President — The Secretary will call the roll.

Upon the call of the roll the following delegates responded: Adams, Aiken, Allen, F. C., Angell, Austin, Baldwin, Bannister, Barnes, Barrett, Baumes, Bayes, Beach, Bell, Berri, Blauvelt, Bockes, Brackett, Brenner, Bunce, Burkan, Buxbaum, Byrne, Clinton, Cobb, Coles, Cullinan, Dahm, Dennis, Deyo, Dick, Donnelly, Donovan, Doughty, Dow, Dunmore, Dykman, Eisner, Eppig, Fancher, Fobes, Foley, Franchot, Green, Greff, Griffin, Haffen, Hale, Heaton, Johnson, Jones, Kirby, Landreth, Latson, Law, Leggett, Lennox, Lincoln, Linde, Lindsay, Low, Mandeville, Mann, Martin, F., Martin, L. M., Marshall, Mathewson, Mealy, Meigs, Mereness, Nicoll, C., Nicoll, D., Nixon, Nye, O'Brian, J. L., O'Brien, M. J., Olcott, Ostrander, Parker, Parmenter, Parsons, Pelletreau, Phillips, J. S., Phillips, S. K., Potter, Quigg, Reeves, Rhees, Rodenbeck, Rosch, Ryan, Ryder, Sanders, Sargent, Saxe, M., Schurman, Sears, Sharpe, Shipman, Slevin, Smith, A. E., Smith, E. N., Smith, T. F., Stanchfield, Standart, Steinbrink, Stimson, Stowell, Tanner, Tuck, Van Ness, Wadsworth, Wagner, Ward, Waterman, Webber, C. A., Weed, Westwood, Whipple,

White, C. J., Wickersham, Wiggins, Young, C. H., Young, F. L., President.

One hundred and sixteen delegates having answered to their names, a quorum of the Convention is present.

The President — Presentation of memorials and petitions. The Chair has received communications from the North Congregational Church, Englewood, Chicago, Illinois, and the Congregational Church of Chicago, Illinois, which will be referred to the Committee on Education. Communications from Governor and Other State officers. Notices, motions and resolutions. The Secretary will call the roll of districts.

Mr. Mann — Mr. President, I rise to a question of personal privilege.

The President — The gentleman will state his question of personal privilege.

Mr. Mann — Yesterday morning at the roll call I was unavoidably out in the corridor. I find that my name is not recorded in the Record as present. I ask that the Record be corrected to record me as being present at the roll call yesterday morning. The same thing applies to yesterday afternoon. I was sitting a way back here, and it is very difficult to hear when the roll is called. The same difficulty exists to-day. It is very difficult to hear, and I ask that my presence be recorded yesterday afternoon also at the roll call.

The President — The Secretary advises the Chair that Mr. Mann was recorded as present yesterday afternoon and again this morning. If Mr. Mann was in the chamber and answered to his name yesterday morning the Record will be changed.

Mr. Mann — I find I was unavoidably absent in the rear of the chamber; I passed through the chamber and came back immediately after the roll call.

The President — The Chair regrets that it is impossible, under those circumstances, that the roll should be changed; but this explanation will go upon the Record as containing the statement of the actual facts.

Mr. Green — Mr. President, I omitted, when Mr. Gladding's name, of the thirty-seventh district, was called, to carry out a promise made by me. Judge Gladding has been seriously ill. He was here yesterday at both sessions of the Convention, but could not get here when the roll was called and cannot be here to-day. He asked me to state this.

The President — It will be so noted.

Mr. Wickersham — Mr. President, Mr. Owen notified me that he was unavoidably called out of town and asked me to present his excuses.

The President — Without objection, Mr. Owen will be excused.

Mr. Clinton — My name was not entered on the morning roll call. I was present at every session, from the beginning to the end; but I think at one of the roll calls, perhaps both, I was just outside of the chamber, engaged in dictating and I would like to have the Record show that I have been faithful —

Mr. Sears — Constant.

Mr. Clinton — Constant.

Mr. Hale — Mr. President, I find a note from Judge Eggleston saying that he was unexpectedly called home and will not be able to be here to-day. He asks that he be excused.

The President — If there is no objection the excuse asked for in behalf of Mr. Eggleston will be granted.

Mr. Angell — I desire to present an excuse for Mr. Tierney who received a telegram last night calling him home on important and unexpected business. He will return, he assured me, Monday morning for the session.

The President — Is there any objection to granting the excuse asked for on behalf of Mr. Tierney? There being no objection the excuse is granted.

Mr. Meigs — Yesterday, I arrived after the lunch hour, a second or so after the clerk had finished calling the roll, and I would like to have the Record show that I was present.

The President — By unanimous consent, Mr. Meigs will be recorded as present.

Mr. E. N. Smith — I wish to say that I was here all yesterday morning and yesterday afternoon and I was absent momentarily during the roll call and I would like to have the Record show that I was present.

The President — The Secretary advises the Chair that Mr. Smith is recorded as present.

Mr. Shipman —In the roll calls yesterday, I am recorded in the morning correctly, but in the afternoon "No response" appears after my name. I was here all the day.

The President — Without objection the correction will be made. Notices, motions and resolutions. The Secretary will call the roll of districts.

Mr. M. J. O'Brien — Mr. President, I would like to present the final report of the New York State Constitutional Convention Commission. It is a complete report of the work of the Commission and as it is now finished we have here also a financial statement. I will not ask that we should stop the work of the Convention to have it read, but I would like to have it printed as a document, because it involves an expenditure of ten thousand dollars which was appropriated by resolution of this Convention and fifteen thousand dollars by the State through acts of the Legisla-

ture, and I would also like to have the resolution which is based on the report read, and, if agreeable to the delegates, adopted.

The President — The Secretary will read the resolution.

The Secretary — By Mr. M. J. O'Brien: Resolved, That this Convention approve, subject to audit by the Committee on Contingent Expenses, the amounts expended by the Constitutional Convention Commission as set forth in its report dated August, 1915; and, be it further Resolved, That this Convention hereby approve of the proposed distribution of the remaining copies of the publications issued by the said Commission in accordance with the plans outlined in the Commission's report; and be it further Resolved, That this Convention hereby acknowledges its grateful appreciation for the valuable aid which it has received from all those who have so generously co-operated with the Commission in the preparation of the publications which have been of value to this Convention in the preparation of a new Constitution.

Mr. Wickersham — I move to amend that resolution by adding an expression of the thanks of the Convention to the members of the Commission for the very admirable work which they have performed in the preparation of the various publications issued by it.

The President — The Chair suggests that there should be a separate resolution. The Convention would hardly want to incorporate that in the body of the resolution offered by Mr. O'Brien.

Mr. Wickersham — No, Mr. President, I want to amend it, because Judge O'Brien proposes to extend the thanks of the Convention to the various gentlemen who have assisted the Commission itself and I desire to give expression to the appreciation of the Convention of the work of the Commission itself.

The President — That should be offered as a separate resolution.

Mr. M. J. O'Brien — Mr. President, as the report is not to be read, I would like to say to the delegates that, under the disposition that has been made of the publication — there were about a thousand copies published — we have still remaining about 650 copies of most of the publications, practically all of them, with the exception of one. Our thought was to have them distributed to the libraries and to the educational institutions of the State; and, if we had any left over, to the public libraries and institutions throughout the country. We would be very much pleased, if, however, in addition to the copies already supplied any delegate would like before the distribution is made to have a complete set and will give his name, either leave it here at the post-office or with the clerk, to send a complete copy or any number that the

delegates will indicate before the distribution is finally made. I would like, Mr. President, in order to bring it to the attention of the Convention, to suggest that the report be printed as a document.

The President — Does Mr. Wickersham insist on his proposed amendment to this resolution?

Mr. Wickersham — No, Mr. President, I will submit that as a separate resolution after the original resolution is acted on.

The President — All in favor of the resolution offered by Mr. M. J. O'Brien say Aye. Contrary, No. The resolution is agreed to.

Mr. Wickersham — Now, Mr. President, I move a resolution of thanks, which I will formulate and hand up to the desk, expressing the thanks of the Convention to the commission for the very admirable work which that commission has done in the preparation of the publications issued by it.

The President — All in favor of the resolution moved by Mr. Wickersham will say Aye, contrary No. The resolution is agreed to.

Mr. A. E. Smith — I ask for unanimous consent for the introduction of an amendment to the Constitution.

The President — The Secretary will read the amendment for the information of the Convention.

The Secretary — By Mr. A. E. Smith. Proposed Constitutional Amendment, To amend Section 9 of Article V of the Constitution, in relation to eligibility for civil service examinations.

The President — Is there objection to the introduction of this amendment? The Chair hears none.

Mr. Brackett — The President, is this amendment introduced by an individual now?

The President — It is.

Mr. Brackett — It is eight weeks too late.

The President — There being no objection, the amendment is received and will be read.

The Secretary — Second reading. To amend Section 9 of Article V of the Constitution, in relation to eligibility for civil service examinations.

The President — Referred to the Committee on Civil Service.

Mr. Griffin — Mr. President, if I am in order at this time, I would like to make application to be excused from attendance at the session of Monday. I have not been in my office since August 1st, and I am informed that there is a matter of great importance coming up on Monday which I should be present to attend to.

The President — The question is on excusing Mr. Griffin from

attendance on Monday. All in favor of granting the excuse will say Aye, contrary No. The excuse is granted.

Mr. Quigg — I really need to be at my home this afternoon and I ask the Convention to excuse me after twelve o'clock noon from the sessions this morning, this afternoon and this evening.

The President — All in favor of excusing Mr. Quigg from attendance upon the sessions of the Convention during this day from twelve o'clock on will say Aye, contrary No. The excuse granted.

Mr. Heaton — I ask unanimous consent, Mr. President, to present out of order a memorial from the Sportsmen's Association of Rensselaer county, relative to conservation, and ask that it be referred to the Committee on Conservation.

The President — The memorial will be received and referred to the Committee on Conservation.

Mr. Stowell — May I be excused at 3:45 this afternoon for the remainder of the afternoon session? By so doing I can reach my home at nine o'clock this evening, otherwise I cannot get there until one o'clock to-morrow morning.

The President — All in favor of excusing Mr. Stowell at 3:45 this afternoon will say Aye, contrary No. The excuse is granted.

Mr. Green — Mr. President, I desire to present the following memorial:

Hon. George E. Green, Hon. Israel T. Deyo, Hon. Samuel H. Fancher, Members of Constitutional Convention, Albany, N. Y.:

Dear Sirs.— We have the honor to herewith present to your favorable notice the signed petitions of 1,050 voters and residents of the 39th Senatorial district, State of New York, who have in this manner expressed their wish that the same preferences be granted to the Spanish War Veterans who enlisted from the State of New York by the Constitutional Convention of 1915, as was granted to the Civil War Veterans by the Convention of 1894.

Respectfully requesting that you present this as a petition from the constituents of your district, we remain,

Yours very truly,

James S. Long,
Frank B. Yovits.

The President — Without objection the memorial will be received out of order and will be referred to the Committee on Civil Service.

Mr. Deyo — I offer a resolution.

The Secretary — By Mr. Deyo: Resolved, That the Convention extend to Governor Charles S. Whitman its hearty congratulations and best wishes on this anniversary of his birth and that Vice-Presidents Jacob Gould Schurman and Morgan J.

O'Brien be respectfully asked to convey to him this expression of the Convention.

The President — Gentlemen, you have heard the resolution to extend congratulations to the Governor of the State upon his birthday. All in favor of this mark of respect to the chief magistrate of the State will signify by rising. The gentlemen will be seated. The resolution is unanimously adopted.

Mr. Dick — Owing to illness, I was not able to attend the session yesterday morning. I came into the Chamber shortly after the roll call yesterday afternoon and was here during the remainder of the afternoon session and throughout the evening session. I desire to have the Record show that my absence at the time stated was on account of illness.

The President — That notation will be made upon the record.

Mr. Ryan — Mr. President, I was here yesterday morning and yesterday afternoon but am not recorded as being present. I would like the Record to show that I was present.

Mr. Eppig — Mr. President, I would like to have my name recorded as being present yesterday morning and yesterday afternoon.

The President — The Secretary advises the Chair that Mr. Eppig is recorded in the Journal.

Mr. Wiggins — Mr. President, I should like to ask the consent of the Convention to be excused this afternoon at 3:45 for the remainder of the session, returning here on Monday morning. I do that in order to permit me to go home to-night.

The President — All in favor of granting Mr. Wiggins' request to be excused after 3:45 this afternoon will say Aye, contrary No. The excuse is granted.

Mr. Ryder — On account of important business, I should like to be excused from the afternoon's session.

The President — All in favor of excusing Mr. Ryder from attendance this afternoon will say Aye, contrary No. The excuse is granted.

Mr. Brackett — Mr. President, I would like to ask my honored leader what the program is with respect to the latter half of the afternoon, whether he expects to hold a quorum beyond, say, four o'clock.

Mr. Wickersham — Mr. President, that will depend entirely upon the delegates. I think we have had a very full week. Personally, I should be very glad if we did suspend about four o'clock, but that is entirely in the hands of the Convention.

Mr. Brackett — I think it ought to be settled now in order that the delegates may be able to send telegrams to their waiting wives and children, that they may be home. I have no suggestion as to when it should be but I would be glad to know.

Mr. Wickersham — Mr. President, if any delegate has a suggestion to make about the time, this perhaps is a good opportunity to make it.

Mr. Schurman — May I suggest that we meet at two o'clock in the afternoon, or a quarter to two, and adjourn at half past three or a quarter to four. It does not affect me, but I think there are some others who would like to leave at four o'clock.

Mr. Wickersham — Mr. President, I suggest a modification of that; that we take a recess from one o'clock to two and sit from two to four and adjourn at four o'clock for the day.

The President — The Chair may perhaps be permitted to call attention to the fact that quite a number of delegates have asked to be excused at 3:45, which seems to indicate that that hour would accommodate a number of delegates who would be kept here if we sit until four or for a longer time.

Mr. Wickersham — Suppose we then adjourn at 3:30. I move that the Convention take a recess, or, if we are in Committee of the Whole, that the Committee take a recess from one to two and adjourn for the day at 3:30.

Mr. Tanner — I have no objection to that adjournment, but I desire to call the attention of some of the gentlemen who wish to speak on the measure now under consideration that we will take up the measure section by section at least on Monday. I assume that the Rules Committee will then limit the speeches to a comparatively short time, as has been done with other amendments. I have no doubt that some of the most prominent members of this Convention will want more than that time, and I would therefore like to call the attention of the gentleman who made this suggestion to the probability that long speeches will have to be delivered to-day.

Mr. Brackett — I am going to make a suggestion, which I presume is not necessary, that it should be understood that no vote would be attempted to-day on any section.

Mr. Tanner — Mr. President, I think that depends entirely upon the disposition of the members towards general discussion. The moment that general discussion lags, it seems to me the proper procedure would be to move this section by section. We want a full debate but we do not wish to waste time.

Mr. F. Martin — Mr. President, I suggest, that instead of adjourning for the lunch hour we sit through until 2:30 or 2 o'clock and then adjourn for the day, if that is agreeable. I make that motion, that we sit until 2 o'clock and then adjourn for the day, not taking any recess at the lunch hour.

Mr. Wickersham — Mr. President, in order to get the sense of the Convention on that, I suggest that the amendment to my

motion be put to the house. If that is the wish of the body, then let it be adopted.

The President — The proposal now is that we sit until 2 o'clock and then adjourn until Monday morning. The Chair's observation on that would be that more work would be done in the hour between one and two than would be done if there were an adjournment and we should return for an hour and half. Is that proposal satisfactory to the Convention? Are there any remarks to be made upon it?

The President — All in favor of the motion that the Convention sit until 2 o'clock and then adjourn for the day, will say Aye, contrary No. The motion is agreed to. Reports of standing committees.

Mr. Burkan — Mr. President, on behalf of certain members of the Committee on Legislative Organization. I submit a minority report on Proposal No. 836, Int. No. 722.

The President — The minority report will be filed and printed under the rule. Any further reports of standing committees. Reports of select committees. Third reading. Is there objection to dispensing with the third reading calendar for to-day? The Chair hears none and without objection it is dispensed with. Unfinished business in general orders. Special orders. The Convention will go into Committee of the Whole and continue consideration of the present pending special order. Mr. Martin Saxe will resume the Chair.

The Chairman — The Convention is in Committee of the Whole on special orders.

Mr. Green — Mr. Chairman, and gentlemen of the Committee of the Whole, I shall try to make myself heard, if I cannot make myself understood. I have been gently reminded of the old adage that "fools rush in where angels fear to tread" and that my remarks were most tremendously undiplomatic, last evening; that I ought not to have referred to anything pertaining to the excise department, concerning which up to date I have had more joy in anticipation than I have had in realization, because since the date my appointment was announced it has cost me dollars in postage in answer to political requests and I have not put them through the window out here, nor any other letters, but I have paid my own postage, and it has kept me pretty busy. I have seen the politics about the office; I have desired from the point of view of the good of the State, and from no selfish or personal motive to if possible reform that proposition to some extent and not make it a political "kick-about," hence my undiplomatic action in speaking of this. To depart this life officially, in the language of my good friend, the Chairman of the Committee, possesses no terrors to me, either before or after I get into that official

life; but I did want to find out what became of the department. The present excise commissioner, whom I am glad to say as a man and a gentleman and an official I esteem highly and believe to be a square man and a good lawyer — and he has some good lawyers on his staff, and that commissioner who sits, I think, within the sound of my voice has given to me as his opinion that the action of this Convention or of the Committee, if approved by the Convention, would wipe out the efficiency of the excise department completely, and if you will read the proposed amendment I think you will agree with me in that. It will scatter it, I think, to the four winds — investigations to go to one place, the collection of license fees to another, and the legal department to be administered by the Attorney-General. You cannot do business that way in that department. I want to say to you, gentlemen, that the excise commissioner is seriously handicapped now, sufficiently to suit almost anyone. I find when I take that position there will be 60 inspectors through whose eyes I must look as I send them to different parts of the State for investigations of violations, and so forth. Every one of these men are there by civil service, and the superintendent in charge of those men has been put in the civil service catalogue, and when I try to give any instructions, what of it? Of course, if I catch them in wrongdoing, then I can get rid of them. I believe in civil service, but the right kind of civil service, that will allow the man who is responsible for results to have some sort of control of the efficiency, at least, of his department; and I think it is going a step too far when the civil service says who shall be the inspectors in trusted positions, and who are kept there so long that to-day when an inspector reaches Buffalo or Ogdensburg, or any other point in the State, about the minute he steps off the train, the traffic understands that the excise department has a representative in town. And, for this year, at least, I cannot secure any assistance in a financial manner. Why? Because the Governor in his desire and anxiety to keep expenses down as low as possible, put the blue pencil through the extra appropriations, and instead of having, as it has been stated in some papers, seventy-five thousand dollars more than was ever given to the department, I think it will show that we got at least that amount less than it cost to run the department for the last several years.

Perhaps the committee noticed that, and that is why they wished to take the duties away. Now, I thought that it would be pleasant for me to ascertain if it were possible to administer the duties of the office with regard to the State, with regard to law, with regard to decency, more than for political expediency, and I thought I would like to bring about me some attorneys of standing and worth, legally, in the great profession rather than politically

to be gotten rid of to help some local organization or State organization. I would like to have such men as I could talk and advise with concerning matters of this character, and if the construction is based on this, as I think it will be, and attorneys have so advised me, the Attorney-General would be the one who looks after the legal part of it, and where would the excise commissioner have any jurisdiction to speak of there, and the collections would be in another hand and investigations elsewhere. But when you come right down to it, just where the Legislature, the incoming Legislature says it shall go, it will go. I have more confidence in the Legislature than a good many people have, but don't tell me that you are afraid to offend the temperance sentiment of the State is the reason you don't mention the excise department by name in the Constitution. I hope if I ever reach the office of commissioner of excise I will never come to be a "reformer." I shall not undertake to do any startling thing. I shall try to carry out the law as it is written there, and I shall try to administer that office in such a manner that the liquor dealer and the brewer and the bond seller, and whoever may have business with the department will understand clearly that he does not have, so far as the head of that department is concerned, to bend his back to the lash of any political whip or contribute cash to any party, but if he will pay his license tax according to law, and abide by the law, he would have the good-will of this department, so far as that is concerned, and it will not be the head of that department's prerogative or thought to deliver prohibition or temperance lectures, or say whether you shall use grape juice or wine on your table. I think I have something of a decent comprehension of the duties of the office, and I think should have an opportunity to see if we cannot do something better for the State than has been done in the past, without throwing anything but bouquets to the gentlemen who have been handicapped in that office in the past, but not one millionth part as much as you would handicap that department now. And please get it plain that I am not here begging to realize the benefits of that office. Thank God I can earn more money than that. If I could not, I would not be alive to-day, because I have had to earn more. All I am asking for is for decency and order and respect of things that are right and not to so harass and embarrass this department that it cannot do constructive work. The Proposed Amendment destroys the efficiency of the department, renders nugatory so far as that department is concerned the very things you propose to accomplish, efficiency and concentrated centralization of responsibility. You destroy it all and you put it simply as a kick-about politically. I am glad that I did not get the backing of the political organization at home or State political backing, because it leaves me a little freer

than it would otherwise, to say "Go to", when they come to me for the political favors. And in saying this, I am as good a Republican and as good an organization Republican as breathes to-day. But I want an organization wide enough, and fair enough, and open enough to be broad-gauged, and recognize all elements of the party, be they Democrats or Republicans, and not hand-pick our candidates and put the stamp of the organization upon them else they fail to meet with approval, and that is why I am in favor of the direct primary laws, by which laws I reached this Convention, and that is why we should not read into the Constitution the proposition to destroy the present primary laws, to try again to re-establish the convention system.

I want to say to you in all seriousness and soberness that it is my honest opinion that had the brewers, the liquor dealers and the bond writers been given an opportunity to write a constitutional law, modesty and a zealous care for purely selfish interest would have prevented them from greater excess than is displayed by this proposed Amendment toward the Excise Department. Do I get myself plain to you? I have been charged with talking about the bush and in generalities so that they would not be understood, and I just wanted to get down on a plain, unquestionable basis with the gentlemen of this Convention so far as my attitude is concerned toward this department question. I did not have any votes to deliver. Fortunately the delegation from my district votes about as many ways as there are delegates, and I think just as much of them for that. I never disliked a man because he disagreed with me. I liked him better for it than the fawning sycophant who agrees with me and is plausible and hypocritical, nice to your face and ready to put the stiletto into you when your back is turned. Two men on this floor this morning told me of a conversation they overheard among several delegates, some of them present here, which occurred last night, and if necessary they will offer their testimony. A particular State officer said last night to several gentlemen when told that there would be a Commissioner of Accounts — now, mind you this quotation: "That is not according to their agreement with me." I don't say we shall not compromise. All the best things we get to-day are by compromise. If we cannot get the best, the ideal, then get the best possible, and perhaps it is necessary to deal with the men who can trade offices for favors in this shape, but it is not good constitutional law-making. I am sorry to see politics get into this Convention, personal politics or party politics. I would not change my mind about this short ballot if you could get me ten times the amount of money and make me a king of the excise department of the State of New York, because I have got opinions of my own in this matter. And I am one of a good many who are not afraid to

say what they think. I was sent some years ago to act on the thousand-ton Barge question, representing the southern tier, and supposed to be an anti-canal man, so I am told. I worked as hard as I could for one year for nothing, and boarded myself, and with a pretty fair committee, present company excepted, and they brought in a report favoring the thousand-ton Barge canal, and I was read out of the party and doomed to death and destruction politically, committed suicide and various other things, and only one nice little paper down in Sidney, New York *(The Record)*, stood by me — all because I came from a solid anti-canal district and said what I believed was right. I understand that is a question on water instead of the department of excise I am discussing, but it sort of adorns the tale.

In less than two years from that vote the Republican Party was good enough to give me a renomination, although all the newspapers had been against me and were then. And my friends in the Democratic Party came to me and offered to endorse me. And I asked them please not to do so, and they didn't nominate anyone against me, and the records will show that I got what few votes were cast in that district. I am not trying to put a sign up here "For Sale" in anything I may say or do, and there couldn't by any possibility be an offer made to me to get my one feeble little vote away for anything you could give me in this State to-day. Now, to return to those letters that I started in with last night. I have asked my friend Mr. Fancher from Delaware county to follow me in reading these letters. Only a few of them have asked to have them regarded confidentially, but they did not say to read them in open Convention; so, gentlemen, whatever I read here will be honest extracts from these letters, nothing hidden. I have extracts here from the letters favoring the short ballot, and I will be equally as pleased to read them. If I am asked to disclose these names down home in Delaware and Broome counties, I will write to each of the gentlemen for that permission first, and I will gladly give to the press or to anyone else these letters, and the President of this Convention or its Secretary may read every one of them if they wish to. I wish again to reiterate what I said last night, that more than five to one of these letters are against the so-called short ballot. This is one from a large employer of labor, a man whose hand is on the public pulse pretty well. He runs one of the largest and best hotels in the district, and he employs a good many people outside of the hostelry: "I believe the voters should elect the State officers as now. I believe the 'short ballot' would invest the Governor, whoever he may be, with too many arbitrary powers. My feeling is that the people as a rule can choose the right man for the right place as often as any

individual can, be he Governor or President. Them's my sentiments." And this is from an ex-office-holder of Binghamton: "In reply will answer that I discover that the words 'short ballot' have a seductive meaning to a great many people, but understanding that a considerable portion of the State officers are to be appointed, the short ballot immediately loses its charm, and, I believe, they are generally in favor of the election of all State officers. I have not made any canvass to determine this, but in meeting people from day to day, I arrive at this conclusion."

This is from a laboring man, a representative man: "Election favored by the majority of my friends and acquaintances." This is from the greatest leader of labor organizations in the county of Broome. His letter is an exceedingly striking one. This short excerpt does not do justice to it: "I have always been an ardent adherent to an elective form of government, no matter what the office may be, and I therefore sincerely trust that the deliberations of the Convention may see its way clear in adopting laws that may grant the whole people their full franchise. Should the Convention do otherwise, in my humble opinion, it will mean retrogression, instead of progress." The next is from a member of the Republican organization in the county, a laboring man, a man of splendid character and influence: "I certainly believe the voters desire to elect all of the state officers, and if the privilege was extended to a greater number of the state officials, I think it would not only be an advantage to the Republican Party, but to the people at large." And this is from another laboring man, and a member of the Republican organization: "As for myself, I think we could get just as good or better men through the appointive system, but I think, from what I have heard, the common people think there are not enough elective officers now." This is from a priest from my district, a splendid gentleman. I sent letters to only two. They divided equally, one favoring and one against. "Personally I have very little choice, but I think that the voters are entitled to some latitude in casting their ballots for the respective candidates. I think this would give general satisfaction all around." This is from a gentleman from one of the towns, an ex-office-holder, a very fine man: "I should prefer number three, the entire state ticket, and I think a majority of voters would, for the Governor has patronage enough as it is now. Number four, the Judiciary, should be elected." This is from a banker from one of the northern villages in my own county: "My opinion would depend somewhat on the term of the Governor. If the term is to remain two years as at present I should have no objection to the short ballot, but if the term of the Governor is to be lengthened to four years then I should prefer the present method. It is all

right to say that we ought to be more careful and get good men which is all true, but once in a while we get a gold brick like" — and I have left that blank because the man whose name is mentioned is blank to-day —" and then there ought to be a chance to get rid of him. Anyway, I do not see any objection to the present system. Therefore, I think the present system is, after all, the best and certainly so if the Governor's term is made four years." And this is from a gentleman now seeking office on the Republican ticket and I am not sure but some others. He has often sought it before; a fine man: "I have conferred with several and they all say they believe the people should elect State officers. I am of the same opinion myself." This is from a banker in Binghamton, a Democrat: "I am certainly not at all in favor of the so-called short ballot and think the present system of the people electing the principal State officers besides the Governor and Lieutenant-Governor should be adhered to. I do not believe that the Comptroller or State Treasurer should be appointed by the Governor, and do not think that the people generally are much in favor of this."

I will skip No. 13 for the present, and go back to it, Mr. Fancher. Number fourteen comes from a man who has had as much to do with politics in Broome county, I think, as anyone, a very square gentleman, a man holding office to-day: "I am opposed to it and for that reason I have interrogated many persons on the subject and fail to find anyone who is in favor of the above. Most of them say that they will vote against all the amendments to make sure they hit this one. Also, the centralizing of power they refer to the war now going on in the old country. People say that had the officers there been responsible to the people they never would have dared to declare war, and they seem to think this measure to be one of the first steps toward throttling the voters and nearer towards monarchy." The next is from a lawyer, one of the most reputable of the Broome county bar, who never participated in politics: "I am in favor of the election of State officers, with the possible exception of Attorney-General, by the people." And, peculiarly enough, I have a number who favor the short ballot who say that the Attorney-General ought to be appointed, and from both sides, the opponents and those favoring, they seem to pick out in many of these letters the one officer whom the Governor ought to appoint, and that is the Attorney-General. The next is from a gentleman from the western part of Broome county: "The old method of electing the entire State ticket. I think the short form of ballot puts too much responsibility on the Governor." Another one from the northern part of the county, from a pretty good looker-on, who understands what he is talking about and does not

mix up with politics: "Every one around here that I have talked with are unanimous for the way I marked,— Let the people elect." Here is one from an ex-judge of the district, who took a great deal of pains, as he writes me, to discover the sentiment: "I have made it a point to obtain the views of a number of representative voters on that subject, and I have this to say: By far the greater per cent. of the voters with whom I have talked are opposed to the so-called 'short ballot.' They do not like the idea of being deprived of their right to vote for the State officers who are elected under the present system of voting. They say that there may be cases where a benefit would be derived from a 'short ballot,' but, generally speaking, they believe that great mischief and much wrong would be perpetrated by a Governor who might seek to establish a personal organization with a view of building up and perpetuating personal power. It would take a long letter to tell you all that they have to say with respect to the matter, but it is sufficient to say: They are, generally speaking, opposed to the so-called 'short ballot.'"

Mr. Stanchfield — Mr. Chairman, I rise to a point of order. I think the sergeant-at-arms ought to be directed to get the members back in the House.

The Chairman — The Chair will take notice of Mr. Stanchfield's point of order. The sergeant-at-arms will kindly call in the members who are in the lobby. We will suspend for a few moments.

Mr. Green — I assume, Mr. Chairman, that it is the sinners who are out. They are the ones I would like to call to repentance; if they will not heed, I cannot help it.

Mr. Wiggins — Will Mr. Green permit an interruption? I think his observation is correct, as I look around. I think it would be very enlightening indeed if Mr. Tanner and Mr. Stimson and Mr. Wickersham, our leaders, could be here, so that they might hear what Mr. Green might have from home.

Mr. J. L. O'Brian — Mr. Chairman, a point of order. I don't think the gentleman should comment on the individual members in their absence from the Chamber.

Mr. Wiggins — It was not with the intention of reflecting upon them, Mr. O'Brian, but I know Mr. Green is reading what he has for the purpose of giving some light to the members of the Convention in order that they perhaps might read the reports which he has had from his section as being evidence of the position he has taken. I assumed that all the members of the Convention would be very glad indeed to follow the wishes of the people in this respect, rather than the wishes of the newspapers,

perhaps. Therefore I thought it most desirable to have the gentlemen here.

Mr. Wagner — Mr. Chairman, I raise the point of order that there is not a quorum present.

The Chairman — The clerk will ascertain.

In order to ascertain whether there is a quorum present, the members will please rise in their seats.

Mr. Brackett — Mr. Chairman, I agree that there is not a quorum present, but do not let us waste our time; let the gentleman proceed, and the sergeant-at-arms informally inform the members that their presence is desired.

Mr. Wagner — I think, Mr. Chairman, there is now a quorum. I withdraw my point of order.

The Chairman — The committee will come to order, and Mr. Green will resume his argument.

Mr. Green — Is it up to me to proceed with the letters from home ?

The Chairman — Yes, sir.

Mr. Green — I would feel just as proud if the rules permitted us to do as is done in Congress, and " ask leave to print," but I believe that is not the way we are doing business here. I have only a few of the letters, from which I have made short extracts.

Mr. Wickersham — Mr. Commissioner, considering the limited time we have, might I suggest that the reading of the letters that you have here assembled takes the time of the other gentlemen who want to debate the measure, and if you could abbreviate it it would be very much appreciated.

Mr. Green — Mr. Chairman, I will say to the distinguished gentleman, that I have taken fractions of minutes to hours taken by some of the " highbrows " of the Convention, and I take off my hat to them, but I think my vote was as conclusive as that given to any other delegate, and I shall reserve my privilege unless I am taken from the floor and go on as courteously and yet as strongly as I think we should be allowed to do at times. These letters are from the folks at home that I think more of than the people abroad, and the people of Broome and Delaware counties represent as much of the public views as the people from other parts of the State, and if you do not choose to listen to their voices, but rather to the voices around marble halls of those who dine with multi-millionaires and dream dreams and then wake up rudely and find that the dreams do not come true, why that may be a constitutional way of doing things, but it is not my way, and I am not up for election or appointment to any position on earth, and I have for the people back in dear old Broome and Delaware counties the highest respect, the deepest esteem for the regard they

have always shown me when given an opportunity, and I wish them to be heard to some extent on this floor. Well, that is from the Judge, and this is from a gentleman, he is an undertaker by profession and he is a representative American citizen whose opinion I take a great deal of stock in. He says: "I am personally in favor of electing all of the State officers. I have also talked with forty or fifty active business men of our city who are of like mind. I have no objections to your using my answer in any legitimate way where it may be of service to you." Since he said that, I will say that is from Truman O. Watrous of Binghamton, New York, and the delegates to this Convention would do well to embalm in their hearts and be guided in their votes by his statements.

Mr. Byrne — Will the gentleman yield? Has the undertaker suggested any way of ending the career of public officials?

Mr. Green — No; except by appointment. This is from a high-class man who has not mingled in politics, a resident of Binghamton. "I believe it would be better for the people to nominate and elect the State officials." This is from another representative citizen: "In regard to articles 1, 2 and 3, personally, it would not make any difference with me, but think the people in general would sooner elect the entire ticket the same as heretofore." Here is a gentleman from the town of Kirkwood — and I was born back in that town, so I kind of like to read from Kirkwood — I have mislaid some of my dope, but I will get it in a minute. I guess I have it back on the desk.

Mr. Baldwin — Would it be embarrassing if you yielded the floor for a couple of minutes?

Mr. Green — Not in the slightest. You cannot embarrass me.

Mr. Baldwin — I had not intended, Mr. Chairman, to say anything upon this question, but I find myself a great deal in sympathy with the gentleman from Broome. I was so much impressed last evening with the story that we heard, that I am grateful to my friend from Broome, if he will yield to me that I may record some observations at this time, during which it will give him an opportunity to rest for a moment. I hope that the Convention will pardon me if I introduce an innovation. Coming so late in the session, I think that it will not establish a dangerous precedent. I have taken this from last night's record, a little observation from Mr. Quigg: "There was a mammoth cobweb stretched across the river. It held in its meshes a million dewdrops that glistened in the morning sun like real diamonds. As we broke through the cobweb, I saw that to which the guide had been trying to direct my attention, crouched on a boulder by the side of the

river was a huge mountain lion." I have then paraphrased that a bit, like this:

COBWEBS.

There are Cobwebs 'cross the river,
Glistening in the morning dew,
And the sunlight playing on them
Oftentimes obstructs the view.
And we think we see real diamonds
Shining in the morning sun,
But their glory goes in vapor,
Ere the day is scarce begun.

Every one would like his Cobweb,
Stretched across the river, too,
Just to get his share of glory
As the other "Bosslets" do.
Just like Banks and Agriculture,
Health, Insurance and Finance,
Civil Service, Education,
Or Utilities, perchance.

If the Cobweb of Correction
Gets its place so it can shine
'Long with Justice and Taxation;
And if Brooklyn falls in line,
Why stop there, why not continue?
Why not let us all agree?
Let us do as Broome requests us,
Let's write in Boozology.

Can't you see that prohibition
Militant, is after Booze?
If we stretch this Cobweb over
"Demon Rum" can never lose,
'Cause it's in the Constitution,
Put it in, I'm sure you will,
'Twill be lost among the Cobwebs
Stretched all through the Tanner bill.

Shall we look beyond the Cobwebs?
Is there danger in such power?
"The People Rule" has been our motto,
Shall we change it in an hour?
O, let's brush away these Cobwebs
With glistening diamonds rare;
Let us look far up the river,
There's a lion crouching there.

Mr. Green — I tender my regards to the gentleman who rested me and who did almost as well as a poet as I could do myself.

Mr. Eisner — When I heard by accident a few moments ago what the gentleman from New York was going to do with the gentleman of excise, I thought it would only be proper to take a little of the other side of the question and if I may be permitted to read into the record a few observations I will take only sixty seconds:

O hark, O hear, how loud and clear
Wails the Commissioner of Beer!
He has resigned because his palate
Couldn't stomach shorter Ballot.

Kings smile on Tanner sweet as honey,
Shorter Ballot saves our money,
Travis is quite smooth and keen
But who left out poor Excise Green?

Poor Excise Green, he reads his letters
And proves he is not held in fetters.

Mr. Green — I am indeed happy to know that I knew enough to let the opposition have a hand in the game, because I always wish to be held by the same fetters that hold me now, that is the voice of the people, and I don't care a snap of the finger for the official death that you gentlemen wish to give me, if you pass the Tanner Committee Amendment, and I think I have made that point plain. I don't have to have the office — and I don't say that any member of the Committee was after my scalp, but I do say that instead of taking the Excise Department out of politics they have jammed it in so closely that it cannot be removed from politics, and I shall refuse to play the part of the yellow dog that simply gets kicked and is expected to howl when the responsibility is taken away except in name and others have the doing of the things that I ought to do as commissioner, and for that reason, gentlemen, I don't have to take the place of a clerk in any one of several departments to gain a livelihood, nor did I accept this position because I wanted it or sought for it, and had I been looking for a position it is the last one in the State that I would have asked for. I was appointed by a Governor whom I believe to be as good a Governor, and who will make as good a Governor as the State of New York ever had, and for one purpose only, not to be dominated by him, but to do my duty as an appointed office holder under him. I am not here to speak for the Governor, he can speak for himself, and his work, his administration will speak in no uncertain tones regardless of whether I have the "boozology" department or not, and

it is rather small, may I say, even in a joking way to endeavor to show that I am making a "kick" here, if you will pardon the expression, for fear of losing $7,000 salary. It is said that all men have their price and I don't believe that, but you will have to raise the ante before I would be influenced. "By vote of the people. I believe in the people having their say who should hold those important offices of the State, not a few men. I do not care if anyone knows where I stand in this matter as I believe it is the only right and just way." Then No. 23, from a gentleman who is a retired merchant of Binghamton: "The voters prefer to elect all the State officers. I have talked with several regular voters and that seemed to be the opinion of all. These are my sentiments." This is from an ex-member of the Assembly: "The short ballot proposition seems to be a peculiar one. The general opinion seems to be that too much power is given to one man on the first, short ballot, and the majority seem to favor the third. I think it leans toward the Crown a little to let one man have the whole say, but if the short ballot is the prevailing idea, then the second form would appeal to me as the most logical. Your body being largely a Republican body, it certainly gives the Democrats an opening for a political war cry, if the question is not settled in accordance with the popular pulsation of the voters. It seems to be the third form with all I have shown it to. The judiciary they seem to think should be elected. It seems to me like a family affair, and makes little difference to the little fellow like myself." I will read one or two more letters in favor. I don't want to bore you. I have gotten much better timber than you have got the time and patience to listen to and not one of them a put up job. This is from a labor leader, a Democrat, in my district. This is No. 45, Mr. Fancher: "Under certain conditions I should be in favor of plan No. 1 — the 'Short ballot.' I am inclined to agree with those who hold that greater efficiency and economy would follow an increase in power and responsibility. But as to whether the increased efficiency and economy would reach the 'folks back home' would depend upon the personality of the man who happened to occupy the Governership. In the hands of a strong, wise and conscientious man such increase of power would be wisely and beneficially employed. But suppose a weak, sordid man happened to be elected to the Governorship. That's the 'fly in the ointment.' There is only one way, it seems to me, that such a danger could be avoided, or, more accurately, its evil consequences dispelled — the adoption of the principle of the Recall by the Constitutional Convention. Without that safeguard I should be opposed to any further increase of power to any

executive or administrative officials. With the Recall I should favor plan No. 1; without it I am in favor of plan No. 3." This is No. 27, Mr. Fancher: "I can but believe the Short (sighted) Ballot amendment will share a like fate. The people will not stand for such a step backward in the progress of franchise and will 'bury' at the polls any Constitution of which it is a part and any party that is stupid enough to advocate it. The people want *all* of their *present* rights of selection and then some more."

Now, I will go back to No. 13, Mr. Fancher, that I passed before. This is from one of the best lawyers in the district, who, I think, knows about the subject he is discussing as well as anyone in our district: "In my opinion, the present system should be continued for the following reasons: In the first place, there is a great tendency generally throughout the country, not only in State, but in national affairs, to exalt the executive and make of him practically a dictator. The effect of this idea has already appeared in too many instances and also tends to build up an executive machine. Under the proposed system too many governors (who are attacked with swelled heads) would be inclined to appoint weak men, practice favoritism and put their friends in for the purpose of building up a personal machine. Moreover, a corrupt organization in control of the executive would be more able to fasten itself on the State and control affairs. On the other hand, by the present method, whether nominations are to be made in direct primaries by the people or through the convention system, I think stronger and better men would be more likely to be placed in nomination. Under the convention system, even though the convention is controlled by leading men in the party, the desire for success has always been a potent influence in inducing the nomination of good men for the purpose of placing in the field a strong winning ticket. This will also be true under the direct primary, for in the long run and in the great majority of cases the best men will be selected. Moreover, our theory of government requires that the people shall elect their own officers. Tendency to take from the people the power of election by the creation of appointive boards and commissions is bad enough, although many good reasons can be found for this method, but when we deprive the people of the opportunity to choose the executive officers of the State, we are violating one of the essential and fundamental forms of popular government. Those who are advocating such change are also advocating an appointive judiciary and by and by will want the Legislature appointed by the Governor. Such a policy tends towards a centralization of power which can, in my judgment, only end in creating dissatisfaction and unrest among the people, and if adopted would not be permitted to stand very long."

Gentlemen, you heard a sermon right in that letter from the labor leader down there, who is a Democrat, and who is in favor of the recall — the initiative and the referendum and the recall, and I hope you will read that over when you see it in print. If you keep your present scheme and elect the Governor for two years and the Senate for two years, and the Assembly for one year, if you harken to the voice of the people back home, you will not be called upon for the recall. But, if you are going to put it beyond the power of the people by adopting some high-sounding words to describe it, calling it a short ballot, like home rule, I warn you to be careful. Why, I have analyzed it and I found out after I came here that the term "home rule" soothed to slumber a good many people who thought that there could be as many distinct sovereignties established in this State as there were cities in the State of New York. It was a very deceptive term, and the home rule extended to them, containing the best elements of home rule possible, is far different from what they expected. "The short ballot". That term caught a good many people who were sensible people, because they thought they would not have so many names to look over, because, perhaps, they would be grouped near together, but when they got the real meaning of the term "short ballot" and understood that it shortened their prerogatives and their privileges as electors and put it in the hands of an appointing power to act for them, they became jealous of their prerogatives and their privileges, and I wish to say to you that there is not a put-up job in any of these letters, and if you had written back home as I have and as long ago as I began, you would have received hundreds of replies, as I have, and I believe they would run as mine have, five to one in favor of the elective system.

Now, I want to read just one here — I was going to read several of these in favor of the short ballot, but I selected this as one of the best received expressing the thought that runs through the most of these answers. "I am firmly in favor of the short ballot." This is from an excellent gentleman, well known to some of the delegates here. "This is my opinion without consulting anyone. I believe the closer the State politics is run similar to large business institutions, the better it will be for the taxpayers. There is no large business that I know of that has made a success without a head. I believe that the average voter is not capable of deciding the proper man to elect for the minor offices, and our vote is liable to be influenced by newspaper reports and otherwise that are often misleading, or in other words, the man that is anxious to be elected to an office and has plenty of time and money to spend is able to influence voters through newspaper notoriety, when a far better man that is not so well known and has not money and time to

spend has no chance whatever to be elected. I believe that the voters should elect our governor and lieutenant-governor, possibly comptroller and attorney-general. The balance of the State officers should be appointed by the governor. Then he should be held responsible for his administration. As I understand it, at the present time the governor has no authority to remove or replace any elective State officers, hence the administration of the governor is handicapped however good his intentions may be." Now there is a lot of mistaken thought on the short ballot subject. They think the people are not capable of selecting their men. They seem to be afraid that if the voters are required to select seven State officers to receive their ballot, they will be overcome by brainfag, that our institutions for the insane will be overcrowded because the people will be overworked on intellectual propositions. They say there is no use of electing the secretary of state or state treasurer, that those are clerical positions. Well, then, for Heaven's sake, is there any harm in electing them? Now they say that the great offices of comptroller and attorney-general should be filled by election. That seems to be a peculiar proposition and negatives the other. If you can get better men for the places by appointment, why not appoint splendid men to these tremendously high offices, like the comptroller and the attorney-general, instead of entrusting that to the voice and vote of the people? Gentlemen, this proposition will not stand the light of day. It is a proposition which looks to taking away from the people, instead of giving them anything. I sincerely believe that the short ballot proposition, if carried as proposed here, will increase opportunities for invisible government, for bosses seen and unseen, to secure control. I know that the learned gentlemen who depend upon what they read from high-brow theorists are solidly of the opinion that the people cannot be trusted. I had a spasm of that once in a small way when I was Mayor down home. I thought the board of education had gotten into a rut that was wrong and that I would like to see an appointive board. With help of the newspapers and many men down there, including some who are present here, the law was changed and I had the pleasure of appointing the first board of education in Binghamton. I say that I do not believe it would have been possible for mortal man to have selected a higher class of appointees, regardless of politics, than I selected there. Then don't think, gentlemen, that I am laying claim to any saintly qualifications but I thought that was the thing to do. About two weeks after that the people had an election at which I was a candidate and I was snowed under good and plenty because the people had an idea that I had taken something away from them.

A little later the mayor who defeated me showed me what the bill did by appointing as his first member of that board of education the very superintendent of schools that was gotten rid of through the appointive proposition, or through those who favored that proposition. After that the board commenced to deteriorate and men whom I appointed to the school board, some of them, finally declined to serve longer and it got into a situation where invisible government almost got control again. I believe that in such places if a mayor or an executive would appoint the best men possible, it would be the best by far, but you refer to the citizens of Binghamton as to the appointive offices on the school board and they will say, "No more for us". They are contending, and the newspapers are, that they should go back to the old system of electing school boards. I will frankly say that I have changed my mind and that I believe the majority of executives in cities like Binghamton cannot be depended upon to select good representative strong men for such positions as often as you will elect them by ballot. Ask the people of Binghamton what they think of the appointive power of the present mayor. He is a friend of mine, but ask them how they like his appointments as compared with men they would have elected by ballot. I want to say to you gentlemen that there is little difference between who is mayor or comptroller or Governor; it is just a question of degree, and humanity is very much the same wherever you go. I would rather trust to all the people to make the selection of seven officers as at present, then I would to my best friend or the wisest man on earth to select them by appointment.

The Chairman — The Chair does not desire to disturb the gentleman's debate, but would call attention to the parliamentary point of order that superfluous debate on the question is out of order.

Mr. Green — It is not so superfluous down home. You don't like to hear it, some of you, but back home they think about these things. I have been bringing it to your attention, what the people back home think, but I will cut it short and I wish to apologize to you, Mr. Chairman, and to my fellow delegates who have been so extremely courteous and patient to sit here during all this trying ordeal and have smiled, as my good friend Mr. Nicoll has, while I have tried to talk to you. You do not know how much I appreciate it. We countrymen do not get a chance to round up this way very often, but we take advantage of it occasionally. We like the fellows who are against us just as well as we like our own people, but we like our own folks a little better. Don't you fool yourselves into thinking that you are fooling the people by any of these fancy arguments about the short ballot. You

cannot fool all the people all the time. They are waking up and the newspapers are waking up and you will hear from them next November on Constitutional Propositions. If this is to be carried and submitted to the people, I sincerely hope that it will be put as a proposition by itself so that the expression can come directly there and not on all of the propositions. To save the people from self-inflicted injuries is a laudable ambition. I want to tell you gentlemen that the people will prefer to help save this country from the politicians and the interests, political and otherwise, who would prefer to fool the people back home into allowing the Governor of the State of New York to select their representatives for them because they, the people, cannot be trusted to do it for themselves. I thank you most sincerely, Mr. Chairman and gentlemen of the Convention.

Mr. Dykman — Mr. Chairman, I am a member of the Committee that reported the first bill. I voted for it, and I voted for the amended bill. I expected, when the first bill was reported, that it would be amended before its passage, not because I expected murmurs from a little band from Brooklyn, because "the shallows murmur while the deeps are dumb". I expected the amendments would come rather because the great Democratic party was on record in this Convention, and forty odd Democrats were here pledged to express the opinion of this party. When I approached this question, I found the first expression of the principle of the short ballot in a message to the Legislature by a Democratic Governor forty odd years ago. Before I read that, may I say that my expectations of the amendment have been justified by the amendment proposed by Mr. Smith, so gracefully adopted by Mr. Stanchfield, and I also entertain the hope that the amendment proposed by Mr. Wagner will have serious consideration. It had not occurred to me that the Commissioner of Accounts might be elected by the Legislature until Mr. Wagner made the proposal. I see obvious merit in it, and the more I think of it, the more I am impressed with it. I hope it will receive the very serious consideration to which it seems to me to be entitled. Now Democrats at least may not say, when they approach the short ballot proposition, that they think of it as an abbreviated piece of paper, because forty odd years ago a Democratic Governor, in a message to the Legislature, wrote the words which I shall read. This is taken from a message of Governor John T. Hoffman, in 1872: "Under the existing Constitution, the executive department of the State is not so organized as to insure the most efficient administration of affairs, and the most complete and direct responsibility. The duty of the chief executive officer, the Governor, is to see that the laws are faithfully executed. It is obvious that

in the selection of the subordinate officers, upon whom, within their separate department, the duty is devolved of executing the laws of the State and administering its affairs, the chief executive ought to have a controlling voice. * * * The Governor ought to be held responsible for every branch of the actual administration of the State's affairs. Under our present Constitution, all the important departments are separated from his control. In the management of the finances of the State, of the canals, of the State prisons, in the prosecution of crime, the chief executive of the State has not, as he should have, the directing power. In order that responsibility may be full, direct and unmistakably fixed, and that the people may always know who is to blame for any maladministration, all the heads of administrative departments should be subject to the supervision and the correcting power of the Governor."

Forty odd years have gone by, with a great increase in the activities of the government, and with the complexities that increase almost with the square of the activities. When we Democratic representatives gathered in Saratoga last summer, we heard complaints of extravagance, confusion and inefficiency in the government of our State, and we concluded that our duty was to contribute something to the solution of the questions that were presented. We wrote this plank, after days of labor and at least one night "devoid of ease": "There should be no divided authority or responsibility in executing and administering the laws of the State. The time has come to give the people control of their executive government. The responsibility should be centered in the Governor, who should have the absolute power of removal. * * * We favor an amendment to the Constitution providing for the election only of the Governor, the Lieutenant-Governor, Comptroller and Attorney-General, and we pledge ourselves to the preparation and submission of a scheme of constitutional amendment which shall concentrate responsibility for executive management, simplify the administrative system of the State, and shall provide general rules of departmental organization for the future guidance of the Legislature." Not many of us who were nominated by our party are here; most fell by the wayside. But upon us is therefore centered the responsibility which we hoped would be shared by the many and might control this Convention when it should assemble. For my part, before I came here, and all through my action here I have tried to redeem the pledge which my party made. It will be very unfortunate if that pledge is forfeited in the least. What have we pledged? Not that four officers should be elected and others appointed; not that we might come here, one man choosing one office and another choosing another

office, to end in confusion and nothing else. We named four officers to be elected, and no more. We resolved that all the power of the Superintendent of Public Works, all the power over the canal administration, all the powers of the Highway Commissioner, should be handed to an appointive officer, and we are not redeeming our pledge here if we try to trade the Attorney-General for the Superintendent of Public Works. We will forfeit our pledge if we try to do anything of that sort. What did we pledge then? I say that we might, as Democrats, trying to redeem the pledge, say that the power over the canals shall be here in this hand, and the powers of the Highway Commissioner may be here, and the powers of another department may be here. We might disperse them, with increased confusion and inefficiency. If we did that, we might still have a pretense of being within our pledge. But we certainly will be false to our pledge if we do not bring all these powers into the hands of one or more men appointed by the Governor. The question is dispersal, with overlapping and confusion increased or a reasonable concentration. The reason that then led me, and the reason that has governed me ever since the Saratoga convention, to be in favor of concentration, is this, and especially this with respect to the Superintendent of Public Works. The Governor is nominated because of what the people are thinking. That office is visible, that office is large, that office is interesting; and whenever that office is to be filled the people who do the nominating are trying to get at what the people are thinking. But the State Engineer — oh, no; the State Treasurer — oh, no. The leaders, whom some call bosses, select them and you get away from the people and get the oligarchy that some gentlemen in the chamber prefer, at least that has been my judgment. Of what value are a multitude of votes to determine the qualifications of an engineer? Of how much less value are the opinions of a multitude to select an administrator? If the incumbent of this office should be an engineer, he certainly should also be a great administrator, an administrator who knows how to be just, who knows how to look ahead, who knows how to inspire loyalty, so that the whole force shall work as one man. Is it democratic, is it the control of the people, if you hand over the selection of such an officer to the opinions of the multitude? That has not seemed to me to be good judgment.

Mr. Schurman — I exceedingly regret to interrupt Mr. Dykman, but the Governor has appointed the hour of twelve to receive the Committee appointed by the Convention this morning to convey to him the greetings of the Convention on his birthday. I accordingly ask that Judge O'Brien and myself may be permitted to absent ourselves.

Mr. Dykman — I do not at all share the fears of Mr. A. E. Smith of New York, and I am going to reply to him somewhat in his own words. I have no fear that the Superintendent of Public Works will play politics and be a bigger man than the Governor. If I were Governor of the State of New York, and my Superintendent of Public Works interfered with my policies by his politics, he would come to me or I would send for him; and if his politics and my politics did not agree, I would take him down and show him the Union Depot. I have not a particle of fear that the Superintendent of Public Works will be a bigger man than the Governor. I believe, if this measure is adopted, and goes into the Constitution and the Constitution is approved, that we will have an end of that invisible government by which my friend, Quigg, was harrowed with fear and wonder — fear, I believe, for no one better than the delegate from Columbia knows the power of it. I have wondered whether his fear was not that invisible government might be in the State of New York, and he not a part of it. I listened with interest to the rainbow story, or the cobweb story. Just at sunrise the delegate from Columbia and the guide in the boat, each of them true to his trade; the guide could only see the wild beast and the delegate could only see the cobweb, and both of them entirely missed the greatest wonder of the scene, the rising sun beyond. Now, I wonder if the delegate with his eyes on the cobweb has not missed the greatest wonder of this scene, the rising sun of democracy, the sun that will rise if we get the short ballot and the people actually in control, with invisible government banished, with the real leader — and if you want to call him a boss, the real boss out in the open, elected by the people, and responsible to the people, and to be with all his hopes and ambitions dependent on the people, and the invisible skulking boss disappears. I wonder if Mr. Quigg has not missed the rising sun of a real democracy, of the democracy that has for its watchwords, "simplicity, economy, efficiency", a government of the people by the people and for the people.

Mr. Brackett — Recollecting the admonition of the great Apostle, the Apostle to the Gentiles, "Let everyone have a reason for the faith that is in him," I crave the indulgence of the Committee for what I trust may be a reasonably brief time to give utterance to the somewhat of reason why some of us are earnestly opposed to the pending proposition. In doing this I trust that no one will think I speak with any bitterness. I do hope that everyone will give me the credit of speaking with great earnestness. It is trite for me to stand here and suggest to you the importance of this question, we have so informally in lobby and in the hotel gone over the various phases of the question. We have with some formality

in this Committee so far progressed in this direction that each and every one of us knows precisely the importance that attaches thereto. I believe the present juncture to be a pivotal one in the State of New York. I believe that the question whether we shall continue to be a democracy or shall turn our faces against democracy is involved in the discussion which we are here having. It is clearly only upon us to decide here and now whether we shall continue in its breadth and in its strength and in its integrity the system of manhood suffrage under which we have traveled for three-quarters of a century, or whether, the most reactionary of reactionaries, we shall turn back the hands of our political clock seventy years and return to a system that was then recognized as outgrown and as unfitting for a free people. There is truly involved here, stated briefly and succinctly, the question whether the great State of New York shall to-day turn her back on the progress in self-government, and turn her face toward the past and to the Russian idea. Who are interested in this proposition? Alas, there is none, there is no citizen of the State who fails to have a deep interest in it, whether he recognizes it or not. I mean to speak here, Mr. Chairman, this day for those who cannot speak for themselves, who can only suffer and think, and here and now I make the cause for which we plead the cause of every man and woman and child back in the country, far away from the centers, where you gentlemen go to get your sentiment, where the high living and the clear thinking is done in this State, I make what I say their cause to-day. And then, too, we are speaking here not simply for to-day. We are speaking not simply for the succeeding twenty years. We are speaking for all the future, because it is not the position in which you find a people at a given moment in advancement or in civilization that determines what the future shall be. It is the position in which you find their face. If you find them facing the rising sun, you may be sure that that people will advance in the cause of liberty and of self-government. But, however far advanced they may be, if their face is toward the setting sun, you may be sure that ultimately free government and self-government will see their end. I quoted the other day here the noble words of Lowell. I give them to you again — "They enslave their children's children who make compromise with sin". We to-day, or next Monday, when we take our vote, decide the question not simply for ourselves and for the succeeding generation; we decide it for our children's children, to the remotest generation.

With these thoughts in mind, Mr. Chairman, I cannot approach the consideration of this question without a feeling of awe. We have had our quips and our jokes. We have asked our questions in

derision. It comes that in the final consideration of this question it must be settled by every delegate for himself, with his conscience and before his God. The man who, failing to appreciate the solemnity of the position in which he stands, when he is called upon to decide the policy which may mean, and which in my judgment will mean, whether we are to continue free or bow ourselves to absolution — the man who fails to consider the solemnity of the position in which he finds himself placed at that time must be poor indeed. Nor should it be considered here, Mr. Chairman, in the decision of this question, whether or not we are to succeed. The question of success or failure on the floor of this Convention, the question of success or failure at the polls even, is of little consequence compared with every man following the inner light and working out what he believes to be true. Great names and influence can have no weight with us in the settlement of the question. Mr. President, I cannot tell you how glad I would be to be in accord with the influences that have dominated this Convention from the time that the gavel first fell at the opening proceedings. I would love to be labeled as one of those who are advancing. Why I recall as far back as the days in college, when one of the mottoes of the literary societies was — I may not pronounce it now in the modern language with which you are familiar — *Kata podous proagomen* — I think the literal translation is "We advance according to our feet." The liberal translation is "Step by step we advance." And I want to declare to you here, to-day, Mr. Chairman, that in all the almost fifty years since that time it has been my earnest wish and hope that the sentiment of that literary society's motto should be present with me in my every public act, and so when I see my honored leader and the gentleman from New York, Mr. Stimson, and my honored political leader, Mr. Tanner, starting out with a 28-inch step and saying that they are going toward progress; and my brother from Erie county, Mr. O'Brian, who has to take two steps to their one, but keeps well up with the procession, and who, by a diligent beating of the drum, manages to make as much noise and attract as much attention as any of them, when I see them at the head of the procession I cannot help but envy them and if it were possible without the abandonment of convictions which I cannot abandon, I would love to be up beside them doing my very best. Why, Mr. Chairman, over and over again as I have seen the cherubic face of the gentleman from Erie coming out from the room of the Rules Committee with a smile of satisfaction, and recognize that it is because the leader of the Convention has said "Well done, young man; well done," I envy him more than I can tell you. But it is because the conviction that has grown with the years and has kept company with the hours, it is

because it is impossible for me to look at this as other than a dangerous proposition that I find myself compelled to part company with such a charming band. The sorrows deepen with the reflection that when the remote historian shall glean from our age-stained records, the pages of which may be gnawed deep by the tooth of time, when he gleans the history of the Convention, he will be compelled to separate me from this class which I thus love — although I cannot tell you, Mr. Chairman, how much I hope that he will be compelled to add in the light of the intervening experience "But the old fellow was right!"

Whoever receives light in another direction, whatever of powerful influence or weight of great names is thrown into the scale of this step backward, ought not and will not and shall not count a hair's width. The principle discussed is too basic to our system to be judged except out of the travail, the very travail of one's own soul. There has recently sprung up a revival of a demand for what is known as the short ballot. The gentleman who spoke yesterday in favor of the ballot called attention to the fact that it was not new. He spoke truly, Mr. Chairman; it is not new. But when the great mass of the people supposed that it was dead, it was only sleeping and has revived into hideous life very recently. He suggested to you that Governor John T. Hoffman, who as I recall was Governor in 1870, sent in a splendid argument in favor of the short ballot. He need not have come to such a modern time in his reference. If he will do himself the work of going to the debates of the Constitutional Convention of 1867, he will find there that the very arguments urged in favor of this proposition here, were urged there and then he will find that that noble old Roman, Martin I. Townsend of Troy, summed up the argument against it all and the Convention of 1867 would have none of it. But there has sprung up a revival of the demand for the short ballot. Where it came from I do not know. I am sometimes reminded of the old words of the nursery, "Out of the nowhere into here". And it is proceeding, coming from the dark with an uproarious cry for the return to the appointive system in our State government, the details of which have been concealed under the name of the short ballot. Dragged into light, its details as revealed are the election by the people of the Governor and Lieutenant-Governor of the State, and the appointment by the Governor of all the other State officers heretofore elected, and tacked onto this if it is deemed possible to put it over, which it is not here — but, Oh, what a myriad of tears have been shed that it is not possible — tacked onto this is the scheme to make the judiciary of the State an appointive one, to have all the judges who since 1846 have been elected by the people, hereafter named by the Executive. I

do not know, as I have said, from whence this scheme is revived, whence the revived proposal springs, but I am sure that, whatever its source and whoever its sponsor, it came from a heart that in its inmost core hates self-government and that seeks for opportunity to limit and curtail it. It was conceived in the malignancy of one who despises the control by the people of their own affairs, and it was born in that spirit of aristocracy that seeks to limit participation in actual government to as small a percentage of the electorate as possible. It is the old, old struggle between equality and privilege. Old as the aspiration of mankind for freedom, and it will never end as long as privilege seeks an unfair advantage in conducting all public affairs and as long as a selfish hand clutches the power that does not rightly belong to it. It is the same struggle that wrested the Magna Charta from John at Runnymede 700 years ago last June. It is the same struggle in which the voice of freedom found expression in the great declaration that all men are created free and equal. It is the same struggle that fifty years ago culminated in the proclamation of the great President that vivified and made a living force of the words of that declaration. Stripped of all verbiage it is the struggle between the masses and the classes, and, Mr. Chairman, in that struggle I can find but one side upon which to take my stand, and I pray that courage and strength may be given to the end whatever the weight that may be massed against me to continue on that side to my latest breath.

I am sure that I have recognized and criticised the result of rule by the people, the results at the polls as often and as earnestly as any man, but it still stands with equal freedom as the renovated doctrine of the ages, that the direct and universal participation by the people in the affairs of government, both national and State, is the doctrine upon which we must rest whether we like it or not if we are to remain a republic and a free people. Recalling a moment what has been said as to the influence of great names, when the gentlemen bearing them which are quoted in favor of this, have you ever noticed that the great bulk of them are men who have occupied executive positions, and executive positions only? Call the roll: General Wickersham. What position have you occupied? Attorney-General of the United States, and executive post. My brother Stimson. What position have you occupied? Secretary of War — and can you imagine an ex-Secretary of War who does not want to have the martial hand and the absolute rule? The President of the Convention. He has occupied six years in the Senate of the United States, but when his mind was plastic he occupied before that the position of Secretary of War and Secretary of State and that is where he formed his opinions

of the methods of government. Ex-President of the United States Taft. The man who held, aside from the judicial position where of course everything was held with an even keel and he had no decided political opinions, occupied the position of Secretary of War and Governor of the Philippines, given absolute power, and finally President of the United States, and, because he thought he could, and in most cases could, do things better than if he had power than if without, believes that there should be absorbed to the executive all power and all influence. Mr. Chairman, I cannot forget that belief, and as he did believe that he knew more about the needs of the people and the wants of the people than the Congress which the people had elected, by the utmost stress of executive influence and executive persuasion, he finally succeeded in dragging through the Congress of the United States a reciprocity bill which so offended two millions of people of his own party that he was not accorded the re-election to which, upon the great merits of his administration, generally, he was entitled.

Do you believe that the executive should have the power in that case of passing a reciprocity bill? He ought not. I recall that he did pass it, but it was defeated on the Canadian side. President Wilson, a man who never held anything but an executive office, if I recall, Governor of the State of New Jersey, and President of the United States, and as he casts his eye over the situation, he believed that he could decide questions and formulate policies and make laws better than the Congress of the United States, and what did he do? He has struggled with all the power of his great office to whip through the Congress of the United States a ship-building bill which ought never to be enforced upon the people. In the discussion upon that bill, against its adoption, this language was used: "Oh, sir, the liberties of the free people depend upon the courage and the persistency of a minority; they depend upon independence of thought and action on the part of the members of legislative bodies. If we are merely to register, if we are to refrain from discussion, if we are to smother our judgment, we are contributing our part towards a process more vital to our country than any legislation that we can devise, more injurious than any benefit we can render." Those were the golden words of Elihu Root in the Senate of the United States on the 25th day of last January. Oh, sir, how I wish he would permit those words to be the expression of his present state of mind. How I wish that closing the career, which by the favor of his fellow citizens of the State of New York has been such a grand one, that he could be induced to see the light and stand up as a champion of the people, as he might be, instead of turning his back upon the people whom we represent. Mr. Chairman, if I could only have

my tongue tipped with fire, and my lips brushed with the honey of language, so that I could convince him of the fair and proper course, there would not be a corporal's guard in this Convention in favor of the proposition reported by the committee. One more concrete example of those who believe in the concentration of power in the Governor. Over in Boston, there was a Convention of Governors held this week, and there is not one of them, from the oldest down to the youngest, that is not thrumming the strings of concentration of power with the willingness to take responsibility. From the infamous Blease, who advocates lynching as an evidence of liberty, through the whole category, every mother's son of them is in favor of an increase of executive power. Now, I am not unmindful of the fact that the situation of the opposition toward the bill has been radically changed and for the worse within the last few days. It has been my privilege through the years to sit by, a silent observer of parliamentary methods and to watch the way things are done by the machine. I recognize that the organization of the body, and its cabinet and the invisible influence which the president and the cabinet of necessity has, and must have, with this power to throw political — I don't mean favors, but political bouquets, to this member or that, is always a strong one. But I want to tell you that in persuading these gentlemen to favor this measure, they have treated the situation with the utmost practicality. I recommend that my friends, Wagner and Smith, get the stenographic reports, some of the doings here, take them down to the Chief and tell him that cards and spades could be given to him, and little casino thrown in besides.

The Comptroller of this State, Mr. Chairman, was tremendously stirred up at the infamous outrage of including the Comptroller among the appointive officers, of stripping him of his powers and passing the powers over to an appointive officer, and so having conscientious scruples against the appointive system anyway, he holding an elective office to which he was elected, he made common cause with those who did have some convictions on the subject against the measure. But suddenly, without any consultation with those with whom he was in league in defense of a Constitutional proposition — suddenly his own powers being carefully preserved by an amendment to the bill, he discovers that after all his convictions are not so deep as he thought, and that, if the great mass of Kings county patronage is properly taken care of, to hell with the people for the next twenty years, and the fourteen votes of Kings county thereupon were suddenly counted in the column in favor of this measure. And then, too, the commissioner of taxation found that he was not in accord with the provisions

contained in the original proposition concerning the question of taxation. Subsequently, the great sympathy of the members of this Convention was aroused, and somebody suggested that there might be a row. So the taxation commission was left as it was, and thereupon, I fear a vote or two more was counted for the measure. And finally the charities commission, the Committee here had devoted great time and consideration to the subject of charities, and thereupon the charities bill —

The Chairman — Mr. Brackett, the Chair will call the attention of the gentleman to the parliamentary rule that it is not proper parliamentary practice to indulge in personalities or to arraign the members for any —

Mr. Brackett — Oh, Mr. Chairman, I would not do that for a moment, and you don't think I would.

The Chairman — The Chair simply wanted to remind you for fear you might go a little bit too far.

Mr. Brackett — Mr. Chairman, I have recognized that rule for 20 years. There was not and there has not been a thing that I mentioned from the beginning to the end that is a bit improper. It is just putting on the screws a little tight, and relaxing a little bit here and a little bit there. But the result has been that where ten days ago this measure was hopelessly defeated, as was believed upon a conscientious opposition to it, by just a little application of the proper medicine it has been fixed, so it is a very close question whether or not it will be passed here.

Mr. J. G. Saxe — I merely want to state that the Delegate from New York, Mr. M. Saxe, is a little bit sensitive, but the Delegate from New York, Mr. J. G. Saxe, is enjoying it.

Mr. Brackett — Well, I noticed that. It has always been a pleasure to me to have my dear friend, whom I knew from the time he first yapped as an infant to the present time, enjoying himself. Where, Mr. Chairman, has there been any demand, and general demand for the adoption of the short ballot in this State? If any one of you will talk to ten of your neighbors at home, you will find that a great majority of them neither desire nor will tolerate it. The scheme has been fostered and nursed and coddled in the dark. It was done in a corner, to adapt myself to language which my brother Marshall and myself will appreciate, whether the other members of the Committee do or not. The very name under which it is masquerading is misleading and a fraud. Seizing upon an insignificant feature that will result, if the proposition is adopted, in the shortening of the paper, those in favor of the bill have succeeded in magnifying the feature of the shortening, but they have wholly failed to call attention to the fact that the true design and consequence of the plan is to take away from the people

the right to elect their officers, and incidentally to magnify the powers and the influence of the executive, already too great. The insincerity of the movement is indelibly fixed in this attempt to disguise the end sought under the innocent name of the short ballot. I ask again, where has there been any general demand among the people for this change? The whole modern tendency has been the other way and enthusiastically the other way. Did we not lengthen the ballot when the change was made so that our members of the United States Senate were elected by the people? Did we not tremendously lengthen the ballot when the party columns, with its one mark, was eliminated, and the voter required to mark his choice opposite the name of each candidate down the line. Mr. Chairman, where could there be a shorter ballot than we had five years ago? Where? All that the voter had to do was to step in the booth and mark in one circle or the other his choice, and the making of one mark indicated what that choice was. There was a place where the marking of one name gave expression to the voter's will, and the people were not content with it. That did not prevent any one who wanted to have a long ballot to have it. He had the privilege of marking every name down the whole column in the little squares opposite the list of names, if he wished to do it. There was an absolute choice, so that the voter could have either the long ballot or the short ballot, if he saw fit, and what has been done? The Legislature of the State of New York, acting upon what was the manifest wish of the people, passed a law that there no longer be that short ballot, and that no one should any longer make his choice by making one mark. Do you now want to return to the old system? If so, return to the party column. By this direct primary, or this election law, it makes it requisite that the names should be marked. Was that urged with the intention of, since it was adopted, presently taking up the present question and insisting that the ballot must be again shortened, and as a result to tremendously increase the executive power? I don't know. I don't know, but I submit to every thoughtful man in this Convention that the sequence of events is suggestive. Now, gentlemen, you who favor this measure, who get your notions as you go down Saturday night, or Sunday afternoon, to the Union League or the University Club of New York, and there secure your comfort in the hot weather by the cooling influence of lemonade, and in the cold weather by the warmth of ginger ale, I want to say to you that you don't go to the right place to find out what the deep thought of the people of this State is. You cannot go within the radius of ten miles of either of those places and get what is the great sober thought of the people, the average people of the State. I don't blame you. I am not finding any

fault with your morals or with your intentions. I am only sorry that you don't know more, and I will give you my profound sympathy in the fact that you are not so located that you can easily learn more. If you will come up on the little hillside, I will take the old horse, hitch him up, and we will go out and talk with everyone that we meet, and I will spend the week with you, and when you get through, you can go back down of the mouth of the Great Bay, and you will find that you have got more common horse sense, to use the expression, as it were, than you hear in many a moon down where they fully carry out the characterization of Paul, of the men of Athens, that they were all the time seeking some new thing. Most of you have been engaged outside of the State. You have been down in Washington. You have been learning things in a different sphere, and when you come back into the State, we let you get up on the seat alongside of us and we are driving along, trying to give you a lift and help you along on a long and dusty road, and then after a few minutes you reach over and take the lines and say, "We will attend to this, we know more about the affairs of the State than you people who have been living here and been studying it for years." But, there are some tender souls who are troubled about the obligations to platforms. Now, I am not going to help my Democratic friends out. I know how much the Democrats care about a platform — and they haven't very much conscience to be troubled anyway, when it comes to considering political matters. I am, therefore, going to confine my attempts entirely to showing my Republican brethren of the Convention how they are mistaken in stuttering over this proposition. Of course, when I see what looks to me like an alliance between, not Tammany Hall — but between Democrats and Republicans in this body to put this over, I am a good deal disturbed. I won't say that there is any such thing as a signed and sealed agreement, but I will say that I see growing in this Convention more evidence of a bi-partisan agreement between the members of the different parties here than I ever saw in fifteen years, sitting in the Senate of the State of New York. It has not been exhibited so much in the papers, but I want to tell you that the evidence is a good deal more positive and certain to that effect. I would like to know if there is any Republican sitting in this body who ever heard any discussion in any State Convention on the subject of the short ballot. I am not referring to a self-constituted gathering down in the Waldorf-Astoria, where men come together in friendly association and solemnly resolved what they want. The three tailors of Tooley street issued the pronunciamento "We, the people". I am speaking of a constituted convention of the Republican party. Have you ever heard any discussion on the subject? Whatever

was adopted in any platform on the subject came in as a report from the Committee on Platform and had no discussion whatever, and it was read off by the secretary in the closing hours of the convention, and no one ever dreamed what was being put there.

Why, Mr. Chairman, I claim to have kept reasonably in touch with the political field in the State in the last few years. I mean to keep in mind the more patent and open things that occur. I have intended to see the different propositions that were advanced by the parties, and I want to say to you that until last August in Saratoga in the unofficial convention of 1914, I never had dreamed of any proposition such as this has developed and has shown. It never was discussed. It went into the platform of 1912, I am told. It was my privilege at that time to sit within three feet of the man who read the paper, and while my attention may have been distracted for the moment when this provision was being read, I certify to you that I never heard it in 1912. Should such a measure as this become a party shibboleth — I will use Mesopotamia later — a party shibboleth without discussion? Should it be that a committee of thirty-four men on platform hearing the men who are urging it, and finally putting it in the platform, that they should be permitted to formulate the policy of the people of the State without any discussion pro and con in a convention? If it were necessary, I say to you, Mr. Chairman, that I would defy the platform of my party or of any party on such a basic question as this. But it is not necessary. At the Convention of 1914, as soon as my eagle eye observed the proposition, I filed a dissent with the Committee of Thirty that was meeting and formulating propositions that should be presented to this Convention, dissenting from the whole proposition. In that Convention this was said: "What will be the constitution of the convention?"— referring to this body. "It will consist of the wise of the state, and fifteen delegates." You observe I did not put the fifteen delegates among the wise. "When the time comes and the men who are finally selected as members of the body have convened, we trust and hope that they will be men who are not only trained to the business of lawmaking and constitution-making, but who have devoted a deep study to the subjects which we are here attempting to settle. I want to tell you, Brethren of this Convention, that we ought not to adopt anything at all relating to the Constitutional Convention. We should put our power into the proposition of electing Republicans to that Convention, and when we have done that, under the providence of God, we will have the best result in constitution-making that can be had when they have devoted sufficient attention to it to intelligently and finally consider the questions there to be heard." Do you mean

to say that the questions that we are here discussing, the short ballot or any other, should be settled in a Convention that sits two days? But, as I said, the program of this Convention having been presented by the Committee of Thirty — and I guess pretty nearly every man of that thirty is in this Convention, excepting Mr. Guthrie — no, Mr. Brown is not here — but very many of that self-constituted committee are here. That committee having made its report to the Committee on Platform, recommended what? They recommended that they should adopt a short ballot, and they recommended that the Governor should have the right to go to the Legislature of the State and have access there and debate questions in convention. I do not refer to any action of mine except as indicating that at least I am entirely free on the proposition and I will ask your attention for a moment to what I said in a minority report: "I dissent from those portions of the platform about to be reported that declare in favor of making certain State officers now elected by the people appointive and that permit the Governor to participate in debates in the Legislature," giving reasons. When that report of the Committee of Thirty was referred back to the Platform committee, what was done? In the motion of Mr. Merton E. Lewis of Rochester, who joined verbally his dissent and who afterwards signed the written dissent, as I remember, that was filed, the provision that the Governor of the State should sit in convention and participate in debate was stricken out and the Platform Committee would not stand for it. It thereupon went to the Convention and the protest accompanied it.

Then what does the platform say on the subject? I am going to read you a single excerpt, at the expense of repeating what my Brother Quigg read last night: "The delegates to the State Constitutional Convention should be at liberty to approach every constitutional question with an open mind and to vote thereon as their individual judgment and conscience may dictate to be for the best and permanent interests of the people of the State." That is all I ask any of you to do. "This Convention disclaims either the right or the desire to embarrass the freedom of action which ought to belong to every delegate. It thinks it fit and proper nevertheless, to give expression to what it believes the Republican party should advocate in regard to some large questions of public policy which are certain to be considered in the Constitutional Convention." That dissent having been made, the provision that the Governor should go into the Legislature and debate, having been stricken out, what has this Convention done? I want you gentlemen that are really conscientiously trying to see what the obligations of the platform are to see just how much your opponents regard it. I do not want anything that says to me: "You

take the buzzard and I take the turkey, or I take the turkey and you take the buzzard." I want it so that under one of the conditions I will get the turkey. I am not willing, in other words, to be swathed and bound by any provision of the platform which hampers me and have the other gentlemen merrily singing away without a single hopple. What has been done? My brother Stimson, I assume, is as much bound by that platform as I am, but what has he done here? After the Platform Committee would not put in the platform a provision that the Governor could go in and debate, not only that, but after the Platform Committee had expressed its disapproval by striking it out, we find this provision merrily presented here and already adopted, in express violation of the action of the Platform Committee there which was afterwards ratified by the Convention. Do you think that the claim that we are bound and held by the provisions of the platform — it is made of course in good faith, but do you think that it was made without forgetting that there was a like binding on the other side? Well I can go a little bit farther, I hesitate to do it because it involves a personal reference, and yet I am going to — I must, in the development of the question of the obligation of the platform. There were 15 delegates-at-large nominated at that convention and afterwards they were elected, every one of them. I have found some little comfort and thought in the vote that was published at that time and some little argument in favor of the point that I am making. A day or two before the figures were finally collated and published, one of the chief pharises of the press announced that Governor Whitman, having been elected Governor by a large majority, they supposed that the members of the constitutional convention, even those who were opposed to the short ballot, had probably squeaked in by the great vote that the Governor had. I had never thought of it up to that time but when in the next day or two the vote was published and I thought I would look into the "squeak" a little. So I did, and I made a little analysis of the figures as to some of the men that ran as delegates-at-large. Now, bear in mind, no one can say that there was any doubt as to the position of the men who dissented in the convention on the question of the short ballot. I am not claiming that the votes were cast this way or that way, because anyone was for or against the proposition; I simply claim that the people did not care anything about it in casting the vote. They did not take it into account or care a snap. Mr. Marshall was the one who had the highest vote. I thought that brother Low had the greatest, but on the indorsement of the Independence League, which vote Mr. Marshall and Mr. Low had, Mr. Marshall got a few more votes than Mr. Low, so he was elected by 687,378, while

Mr. Low had a little less. There were six members of this body of 15 delegates that were elected that had more votes.

Mr. Barnes — Just for the purpose of having the record correct, Mr. Low did not have the Independence League nomination.

Mr. Brackett — That is right. Mr. Marshall, Mr. Stimson and Mr. Parsons were the three who had the Independence League votes. The Independence League vote, added to Mr. Marshall's Republican vote, gave him a few more than Mr. Low, who was running simply as a Republican. Messrs. Low, Marshall, Stimson, Parsons, Wickersham and Schurman were the six highest men on the ticket and then came the vote for the one who had protested to the Convention against the short ballot and who carried the protest through the Convention. There were three of the delegates-at-large who did not receive as many of the votes as the protestant — and of course you know I do not mention it except as illustrating the point that the people did not let it enter into the equation or consider it at all. It is not because they thought I could write a better constitution than the men who ran under instead of over me, but because they did not consider it; it was not a thing they knew anything about or that they cared anything about. The President of the Convention had 3,450 less than one who had protested against the short ballot. Brother O'Brian from Buffalo, who was about as rambunctious a short-balloter as there was anywhere, had 6,270 less. So, Mr. Chairman, I do not feel any trouble about the obligations —

Mr. Steinbrink — Will the gentleman yield for a question?

Mr. Brackett — Oh, yes. I certainly hate to yield to one of the fourteen from Brooklyn, but I will.

Mr. Steinbrink — Thank you. Is it not the fact, Senator Brackett, that the delegates-at-large ran on a blanket ballot and that your name was pitted against the name of John A. Dix, who had not made a most excellent record as Governor, and who had once been denied renomination; and that, to compare votes with Judge Brenner of Brooklyn, for example, who was incorrectly listed and had a religious attack made upon him by reason of which he suffered —

Mr. Brackett — On whom?

Mr. Steinbrink — On Judge Brenner.

Mr. Brackett — I could not imagine any one making a religious attack on Judge Brenner.

Mr. Steinbrink — I said that he had been incorrectly listed and therefore a religious attack was made.

Mr. Brackett — I did not yield to have a speech made in an esoteric way.

Mr. Steinbrink — If you do not want me to finish the question I will not. Do you not know, further, that Mr. Berri was pitted against former Chief Judge Cullen, who was concededly the strongest man on the Democratic ticket, especially in New York and Kings counties; and that it was because of the way in which the names were pitted against one another that it was reflected in the vote?

Mr. Brackett — I will answer that by saying what I think answers it all very briefly; that if, by being pitted against ex-Governor Dix, delegate Steinbrink means to ask me if I was opposite his name, he being in the Democratic column and I in the Republican column, I will say yes; then I will couple with that the statement, which I believe to be true, that Governor Dix had the most votes of any Democrat on the whole list.

Mr. Parsons — I know you wish to be accurate and I wanted to help you out on this.

The Chairman — The gentleman declines to yield.

Mr. Parsons — I think he is yielding now.

Mr. Brackett — I haven't any objection to Brother Parsons making a speech any time he wants to. I will yield to his question.

Mr. Parsons — Is it not a fact that, as a Democrat, ex-Governor Dix ran about tenth on the list of Democrats?

Mr. Brackett — As I recall, he ran first. That is what I remember and I was enforced by Delegate Foley's suggestion, and I think the figures will so show.

Mr. Parsons — Here is the Legislative Manual and according to that he ran about tenth.

Mr. Brackett — I don't care whether he ran tenth or twentieth, I am speaking of the absolute number of votes received by each delegate on the Republican ticket, and I know that an analysis of the vote shows that there didn't any human voter care a continental about this question of the short ballot.

Mr. Ostrander — Will the gentleman permit a question?

Mr. Brackett — Yes, if any other old man wants to ask one.

Mr. Ostrander — Just a matter of information, how many of the delegates-at-large would have been elected by the vote in their own district?

Mr. Brackett — If the question of the short ballot had been up?

Mr. Ostrander — As it was.

Mr. Brackett — Down south? Oh, my land! But then, that is all forgotten after the votes are counted and after the services are rendered. We have done it over and over again. There is not a reformer in favor of the short ballot that would not have been snowed under beyond description in those districts. And I

also give you warrant that there would not any of you have been elected on the precise issue of the short ballot and nothing else. Mr. Chairman, we may approach this question in absolute openness. We are not bound or hampered here by a single thing, in the Convention or in the platform. We have a right to come to it precisely as the Convention said we should come to it, with an open mind, and no man shall be permitted to get away from the just condemnation that will follow him by attempting to skulk behind some supposed obligation of a platform. I give you notice, as far as I can give notice, that when you get up to the Great White Throne and give an account of the deeds done in the body and your excuse for having voted to take away the controlling power of the people by passing this measure, there will not be any such miserable subterfuge accepted on the part of Saint Peter or any of his compatriots as that you were bound by a platform. The precise proposition, then, is this: that there shall be nominated and shall run at the polls only a Governor and a Lieutenant-Governor, and that the Governor shall thereafter appoint all other State officers. That is the precise proposition of the short ballot. But it is urged by the people who are behind the measure that that is the only genuine, simon-pure, yellow-labeled, with the signature of the Jacob Y. Townsend sarsaparilla kind; all other is a kind of bastard short ballot, and unmoral. But our friends in looking over the proposition here say: "We, of course, recognize that anything more than putting in the Governor and Lieutenant-Governor to be elected is unmoral, but we are going to be a little unmoral, we are going to yield a little." I confess to you that if you want to make a real short ballot there hasn't any one yet come to the very shortest. Why on earth do you want to put the Lieutenant-Governor in as an elective officer? He is about the most useless proposition there is. He has less important duties, he has less influence, he has less of decisive things to decide. You haggle between such officers as the Superintendent of Public Works and the Attorney-General, whether one or the other ought to be elected. If you want to have an absolutely short ballot, elect only the Governor. Let us go the whole distance. Well, but you will say: "But the Lieutenant-Governor may succeed the Governor." You can cover all that by having the Lieutenant-Governor elected by the Legislature, elected by the Senate or appointed by the Governor himself. Now, if you are going to have a real concentrated power, have one. If the Governor is elected, he should be allowed to name the Lieutenant-Governor, so that, if he should happen to die and the Lieutenant-Governor come in, the policy which he, the Governor, was elected to carry out, would be carried on until the next election. It is

utterly illogical and without excuse to have the Lieutenant-Governor elected at all.

It was proposed, further, until the Judiciary Committee of this body finally decided that they would not dare to do it because it would defeat the proposition, that the judges should be appointed, too. They were beaten out of that by fear of God and fear of what the people would do to this instrument. That is now out of it, but it represents the state of mind of those who want the short ballot and have the Governor appoint the other State officers. Why, don't think, brethren who believe in election by the people, that they are soundly converted, as they say in the Methodist class-meetings. They are not soundly converted on the question. Those who want the State officers appointed are just as anxious to have the judges appointed, and they would do it in a minute if they thought they could get away with it. This appointment of State officers comes from men who are soaked and steeped in a wish to have the judiciary appointed, too. I want to say to you, brethren, don't make any mistake about it. Those gentlemen who want the judges appointed, next to getting them appointed by the provisions of this Constitution, are doing the very best thing they can to get it, and they will presently have it. Don't have any doubt about it. If you do not want the judges to be appointed hereafter in your lifetime, defeat this proposition here or at the polls, because, just as sure as the count on election day shows that this proposition is carried or a Constitution containing this proposition is carried, just so sure within the next five years will you have an appointive judiciary, and I would make a small Methodist bet to that effect. Presently you will have every county officer appointed. Don't have any doubt about it. Did the rest of you receive the other day a leaflet from the County Government Association? I did. I suppose all of you did. What is that proposition? They want to have every county officer in the State appointed and they are going to get it if this proposition goes through. It is not a question of how far this proposition to appoint State officers goes; it is a question, in which direction you are traveling. If you pass this proposition that the other State officers shall be appointed, you will presently have an appointive judiciary, and the next thing you know you will have the county officers appointed too. Seventy years ago you had that infamous thing. You had the Council of Appointment and they sat down here in Albany, like spiders in the middle of a web which went all over the State. They appointed this man Mayor of the city, this man County Judge, this man City Judge, this man this and that man that; Sheriffs, Overseers of the Poor, everybody. What happened? It was not

because they did not give good government, these appointive officers. Alexander in his "Political History of New York State" quotes — I cannot remember — one of the statesmen at the time as saying that the Albany Regency gave the State as good government as it ever had. It was not because the government was not good but it was because the rising spirit of liberty and freedom so developed into wrath, and righteous wrath, that the people swept away the whole system, to which you now propose to return. Try all that you may; disguise as you can; honey the pill all that is possible, it still stands and everyone who takes the trouble to think about it must know that it stands, true, that the plan is projected in fear of the results of elections by the people and in a wish to get as far away from such results, of election by the people, as possible. It may be supported by some so delighted with any change as to embrace any new thing proposed, but it was conceived by some cunning mind, which hated real Democracy, the rule of the people, the possessor of which believed he had found a way to take a step away from it.

What will be the result? Instead of a person seeking a State office, expressing his views to the people, attempting to enforce those views upon the people, attempting to get the good will and the support of the people, what will be the result? None of that will be done longer. It will stand that the candidate who is seeking the nomination for Governor will go to Erie county and he will make an arrangement with somebody there that, for the support of that territory, he will appoint this officer; he will go to Syracuse, and Syracuse of course will get the Lieutenant-Governor, because it always does; he will go to Utica, this place and that place. Brooklyn will get its share — don't have any doubt about that. It means that, instead of having the candidates appeal to the people, you will have the most infamous kind of invisible government, men that are appointed to office as the result of ante-election promises and engagements. I hope they will keep them better than the Comptroller did. You will have appointments made and you will have — why, brethren, you have talked of log-rolling in this Convention, and you want to get rid of log-rolling. You will have log-rolling developed to the ninth, and the ninety-ninth, and then the "nth" degree beyond. Then, before I forget it, suppose that the Governor appoints some notoriously unfit man to a place, whose administration is not at all satisfactory to the people, but whose administration in the main has been fair. How will they get rid of the unfaithful and unprofitable appointee without smiting the Governor and all his policies and all his appointees? Why, you might just as well propose that the law should be changed back to the old proposition

that the Governor cannot veto anything in a supply bill but must accept or reject it *en bloc*. In order to get at somebody with whom the people are dissatisfied, the Attorney-General, any of the appointive officers — in order to get at some one particular man, the whole administration must be smitten hip and thigh. In order to get rid of this unprofitable servant, you must perhaps get rid of some other profitable one. It takes away from people the opportunity to consider and to nominate their officers. It takes away the right to consider the claims of this one and that one, and, balancing them against each other, to decide upon the merits of the two. I am not unmindful that very unsatisfactory results are sometimes reached in a government based on popular suffrage. I would gladly *medicine* the situation so as to prevent such occasional results if I could. But, the cornerstone of free government is the right of the electorate to select directly those who shall do the public work. The more of such direct selection by the people, the nearer you come to actual government by the people; the fewer of such direct selections, the farther you get away from it. No self interest should be allowed to obscure this truth, no sophistry to becloud it. Now, do not, I pray you, think that I am hysterical. I am not foolish enough to believe that the fact that the Governor of the State of New York is allowed to name the Secretary of State and the Attorney-General, or the other officers named, will create any government cataclysm. The structure of government will remain. The public work will be carried on. The records will be written in down in the Secretary of State's office just as before. There will be no immediate shaking of the foundations. But you have taken a step away from the true doctrine of a republic and in the direction of the quagmires that have enveloped every previous attempt in that direction. Your coming generation, brought up in toleration of the situation reached by this false step, brought up in toleration of the theory that all State officers should be appointed, will presently tolerate the next step, the appointment of the judiciary, and then the next step, the appointment of your county officers, and presently you have your "man on horseback" and your absolute government. You have taken a step in the wrong direction. The coming generation will be less quick to discern and check the next false step and the succeeding steps to absolutism will succeed with frightful rapidity.

I want to tell you that the philosophy of the boy that had been bitten by the geese, when he was found killing the goslings, was the true philosophy. He said, while goslings did not hurt him, they made geese. There come times in our history when things do not go exactly right, when there is the wish to correct some,

often very real, evil. Then it is that there always springs up some one advocating the notion to turn over the management of affairs to some strong man, who can run them more efficiently, and certainly with much less trouble to ourselves, than if we continue self-government. Then it is that every indolent, every one who cannot impress himself upon the people, and who believes that he would be of more consequence in a semi-aristocracy cries, "yes, yes, so that it may be efficient, let's pass the government over into strong hands, and go off and enjoy ourselves." Anyone thus lazy, thus unwilling to do his share of the work, is an unworthy citizen of a free government. Eternal vigilance and eternal work are the price of liberty. The less of participation by the people you provide for in government, the less interest the people will have in that government. The way to interest one in the church is to give him some church work to do; the way to keep the people interested in their government is to be sure that they have very frequent duties to perform with respect to it. And so, I believe that it was a mistake to change from annual to biennial town meetings, a mistake that has distinctly lowered the level of public interests in all elections and in government itself. If you find your arm atrophying, you do not bind it up in a sling, but rather by rubbing, by use, by every known means, you stimulate it to its restoration. If you find interest in governmental affairs waning with the people, see to it that they are given a more active participation in those affairs. I have here, which I shall not stop to read, a letter from one of the most distinguished lawyers in the State of New York, at present residing in the city of Albany, who has long been a student of affairs. He expresses his unqualified opposition to the plan here proposed and he expresses himself in the various steps of the argument which I have thus far addressed to you. It has been urged that this will make for efficiency. I deny it. I want to tell you that every appointive officer, instead of looking to the efficiency of his work, keeps his eye on the Governor and his ear erect to see what he wants. Every appointive officer has a lively sense of the hand that feeds him and the hand that may take away that feed.

Efficiency and economy? The gentleman who asked for this proposition told about the terrible increases in expenditures. He did not go far enough. Analyze your increases of expense. You will find that every increase that has been, has been an increase in an appointive office. You may examine the record — the figures bear out the statement — and you will find that the expenses of the elected officers have not increased at all. All these increases that have come to the people of the State, and the consequent burden of taxation, have come from appointees and the extravagance of appointees. If you pass this measure, instead of it

being a measure of economy, you will find that it is a measure that will increase the expenses of the government of this State a great deal more than the sum which my brother Stimson hopes that he has saved through the coming years under the budget plan which he has presented. Efficiency! Do you want an efficient government at the expense of self-government and at the expense of freedom? Why, Mr. Chairman, if you want an efficient government, go to the root of it and have an absolute government. There is not today as efficient a government anywhere as the most absolute. I shall not cheapen my argument, I hope, by any reference across the water, but if you want an efficient government you want an absolute one. I want to tell you that if there is a certain prodigal extravagance in administering free government, we can never afford to give up, we must keep to the standards of self-government and of freedom. Why, the absolute government will go out in Albany and say have a street there and divide up there. Absolute government will build the railroad; it will mobilize and provide a system for feeding an army away beyond anything that free government can do. The Czar of all the Russias accomplished with one stroke of the pen, in an instant, what we in this country have been unable to do in 75 years of long and weary effort — produced prohibition. Now don't let the fact that we have not prohibition because of free government make any of you against free government, but simply issuing a ukase the Czar of all the Russias gives Russia prohibition. Why, have you ever thought and figured on efficiency? Who are the efficient ones of the world? I suppose that Henry VIII was the most efficient husband that ever lived. He could regulate a family with a precision and exactness and in the quickest time of any of whom I read anywhere. He could shorten a wife to the proper proportions with the simple stroke of an axe, and I recall in Mrs. Strickland's history that in his efficiency he had ridden for some eight or ten miles from the Castle on the morning when Anne Boleyn was to be executed and when he heard the booming of the guns that announced her execution he said to his courtiers, "To horse. To horse." And started off to court Catherine Parr. He was the most efficient husband that ever lived, Bluebeard not excepted. And he being the most efficient husband, I never in all my reading heard of a judge whose efficiency was like that of Jeffreys, and I look at my friend Gladding and with all his years of experience on the bench he never equalled the efficiency of Jeffreys. He never failed to get his man. He never failed to convict and after the Monmouth Rebellion, eight hundred and fifty heaping graves were the result of assize. You can search from Dan to Beersheba and you cannot find a record like that,

and yet I fail to find him on the scroll of history as the most desirable judge to have.

In 1849, in the Kingdom of Bavaria, Lola Montez had control over the King, absolute control and would dictate with an efficiency that would do Brother Stimson delight, and she said this one shall have that, and this one shall have this, and she was wholly efficient. There were people in Munich who did not like her. They thought that a lady of the character of Lola should not have such absolute power and in her efficiency she went to work to cure that trouble, and she got from England a pack of bull dogs and with these at her heels she would go down the street of Munich, with an efficiency that even Brother Parsons would approve of, and whenever she saw anybody that had criticized her government, at a sign a bulldog was at his throat and he was out of the way. It was the most efficient government Bavaria ever had. Mr. President, it gives me unspeakable pleasure to tell you of the result. The people of Bavaria tired of such efficiency as that, and rose in their might, as please God and the people would rise in this country if you put this upon them, they rose in their might and turned out king, strumpet, dogs and all, and never since have they been harried or bedeviled by such efficient government as that. I oppose this scheme then, Mr. Chairman, because it enormously centers power in the Governor. It adds to the already great power attaching to that office. It adds to the patronage of the Governor as it has already affected the judiciary and minified the legislative branch. May I trouble you to listen to a few words? "The object of a written Constitution is to regulate, define and limit the powers of government by assigning to the executive, legislative and judicial branches, distinct and independent powers. The safety of free government rests upon the independence of each branch and the even balance of power between the three. Unite any two of them and they will absorb the third with absolute power as a result. Weaken any of them by making it unduly dependent upon another and a tendency toward the same evil follows. It is not merely for convenience in the transaction of business that they are kept separate by the Constitution but for the preservation of liberty itself which is ended by the union of the three functions in one man or one body of men. It is a fundamental principle of the organic law that each department should be free from interference, in the discharge of its peculiar duties, by either of the others." And if Irving G. Vann, learned as he is, had never rendered in his long and useful service any other doctrine to the people of the State than that he would have been entitled to all the respect and affection which we pay him now. In the debate on the ship-building bill to which I adverted

before, in the Senate of the United States, Senator Lodge, to whom I suppose will be accorded something of wisdom and experience, adverted to this question of centralization. He said, "I trust it will not seem disrespectful when I say that, although President of the United States, the occupant of that office is still merely human and therefore fallible. The doctrine of divine right and that 'the King can do no wrong' has never yet attached, fortunately, for us, to the President of the United States. What his reasons and argument may be in behalf of this measure, I do not know. He has never made more than a few general statements in regard to it. He seems content to stand on the broad and simple proposition '*sic volo sic jubeo*,'—

> My name is Benjamin Jowett,
> I'm the master of Baliol College,
> Whatever is known, I know it,
> And what I don't know isn't knowledge."

and that is what you are coming to with your Governors.

I am glad that my learned friend in charge of this measure referred to New Jersey yesterday. If there is any state in all the Union that has the reputation of being corporate-ridden, absolutely tied hand and foot, with all the special interests that find center there it is the state of New Jersey and I don't doubt a single minute that the interests themselves in control are glad to have power centered in the Governor, and then see to it that they have the "right" kind of a Governor. Why, Mr. Chairman, do you recall, do you recall what kind of Governors we generally have? I speak with entire respect when I speak generally as to the breed and not as to any individual. Are they selected as men of great strength and power? Are they selected as men having any particular opinions on any particular points? Is not the very converse rather true and if he has any opinion is not the attempt made to have it carefully concealed until after election, so that both sides of the question will support him? Oh, but you say we have pretty good Governors. I want to remind you that the rule of legal hermeneutics of statutory provision is that you must provide and consider not by what a good man will do but what a bad man may do. And how any Republican or how any Democrat, or how anybody else in looking at the record in the last few years can hug to his breast the delusion, the proposition, that the Governor should be everything, how he can stand for that proposition, is a mystery to me that surpasses to me even the mystery of godliness. Will you bring to mind the specific cases in the last few years? I shall name no names. Do you want to have the influences that controlled some of the Governors in the past few

years control the State from top to bottom? Do you believe in your heart, do you believe in your soul, and in your mind, as you should believe, before you vote for this proposition, that some of the Governors that we have had in the last ten years — and I make it ten years back so as to be sure that you cannot identify whom I mean — do you want the influences by which he was dominated and controlled to control every department of the State? I want to say to you if such had been the case in some of the years to which I refer, nothing less than a revolution in the State would have resulted or ought to have resulted. And this makes for efficiency. Efficiency. Oh, efficiency what crimes are committed in thy name? The pitying angels looking down upon the wicked sons of men battling to death in the struggle of autocratic efficiency, will see to-night the trenches where sleep until the morning of the resurrection the thousands who have died without a death bed and have been buried without a shroud or a coffin — the countless dead who, unconfessed and unshriven, have been sent into the presence of the Judge — all the result of a system both autocratic and efficient, toward which you thus ask us to turn.

You say it is a far cry from the efficiency to which I have referred, a far cry from an amendment of the Constitution of the State to the efficiency thus mentioned. It is far. But I want to tell you it is the first step that is taken slowly and the next steps rapidly. No man ever yet went from Albany to San Francisco without taking the first step, and if he did not take it he never got there, and we shall never reach the autocratic efficiency that I have mentioned unless we take this first step — this first step, or a light first step — we never will be blocked up in such efficiency and autocracy as that, and I pray that God, the God of the living will turn us away from any such fate. Mr. Chairman, there were many other things that I wanted to say on the subject. I have merely scratched the surface of the question. No one appreciates more than myself the fact that in discussing this, which requires a sub-soiling, I have merely scratched the surface. I would that I had the power to convince you here to-day. Through the years of a somewhat arduous service to the State that was my privilege and I believe that there runs all through it the consistent thread — it was my privilege in every question to stand or to at least hope that I stood against any situation that would put any human being in the unrestrained power of any individual or any official. That whether it should be a political boss or a Governor, or any other official, when you permit such official or boss to oppress or to hamper or to restrain the liberty of the individual. We must turn our attention to the saving of individualism in this State and in this country or the beginning of the end

is in sight. We cannot permit this government to be centralized either actually or potentially to the oppression of the people and to the depriving of their rights. I agree that many a Governor thus elected might make proper appointments, but you have turned your face towards absolutism without question. If any continuing of the poor service that I have been able to render in the years that I have mentioned, recognizing as I do that in making this argument to you I am making the last word that I shall ever say unless some brief word shall arise here before this Convention, the last words I shall be permitted to say as a servant of the State or in the public service, I would to God I could impress on you that we must pass the heritage along as we received it; that we must give it as it came to us, unhampered and unfettered by restraints; that the only true principle is to give the people direct and immediate control of their officers, that they be permitted to elect as many of them as may be; that their terms shall be short; that we continue as we received our heritage of government, with freedom's soil beneath our feet and freedom's banner waving o'er us.

Mr. Low — Mr. Chairman and Gentlemen. I certainly am not disposed to question the absolute sincerity of the delegate from Saratoga, nor his freedom, nor the freedom of any other delegate to vote upon this question in the light of the debate and with the use of his best judgment and his conscience, and what I so freely concede to him and to all my fellows in this Convention, I ask also for myself, and I want to try to show why my experience in life has brought me to exactly the opposite conclusion from that of the gentleman who has just spoken. I favor the bill of this committee in its main lines because I believe it will bring back to the people of the State the control of the State government as they have not enjoyed it for many years, and that in bringing it back to their control it will interest the people more in their government and secure for them a more efficient and a better government. Now, Mr. Chairman, I think some light can be thrown on this question from our experience. We are a union of States, we live in a State and some of us live in cities. The gentlemen here will realize that when the Battle of Lexington and the Battle of Bunker Hill had been fought and the Declaration of Independence had been made, the civil law was for the moment destroyed. The government of England, whose law had theretofore prevailed, was thrown off and no legal government adequate to preserve order throughout the colonies had yet been created. In that situation the colony of Massachusetts first of all wrote to the Continental Congress calling attention to that situation, and asking for some authority from them to organize a government. Subsequently that request came in one form or another from other colonies.

The Continental Congress replied, in effect, "We have all that we can do to maintain the Declaration of Independence. Let the people in the various colonies organize their own government." And so it happened that they did so and they took to themselves as States all the powers that there were. That is the reason why when the Federal Government had to be formed the States kept all the powers that they had not surrendered. Abraham Lincoln in his first inaugural address as President of the United States called attention to that fact. Now, what happened in the formation of these State governments in that early day? It was a time when there was great fear of the executive power. It was a time when the population everywhere was very sparse, when there were no large cities. The result was that the States were organized, speaking broadly, upon the theory that political safety came only from a division of the power. I remember in our own State we had the council of appointment, to which the delegate from Saratoga has referred; but I ask you to notice the difference between that system and what is now proposed. The council of appointment was responsible to nobody, and I fancy that everyone here would deem that if there is one form of government worse than any other, it is a government which has power and which is not held to strict accountability. However, all the State governments in the States that were colonies and in the states that have since come into the Union have been formed on this idea that safety is to be found in the division of power. Now, what happened? Immediately after the close of the Revolution, we had the Confederacy, the confederation. That gave so little power to the Continental Congress, there was so little power anywhere, that it became very clear to the wise men who had carried the Revolution to success, that unless a stronger union was formed there would be risk of absolute failure, therefore they formed the federal union in 1787, and I want to call to the attention of this Convention that they formed that union on the very lines which the Senator tells us are fatal to our liberty. They made the President the executive in every respect. They gave him the appointment of his cabinet and all the executive officials, and, while it is true, as Mr. Quigg pointed out yesterday, that all the cabinet departments are created by Congress, I want to ask the attention of this Convention to the significant fact that no Congress has attempted to enact what we call ripper legislation. Why has it not done so? Because the Senate as a matter of courtesy always confirms the cabinet members selected by the President, so that it is exactly as though the President has the absolute power of appointment as he has the power of removal. The result is that there has never been any scandal or shock in the Federal government, such as has been common in this State over and over again by reason of ripper legis-

lation which tears up the executive departments, just as if that was government by the people. It is government by patronage, and government in the interest of the machines that defy the popular will. We have never had that in the United States. The President has always commanded the confidence and respect of the people, and we want to secure, if we can, in the State of New York, something of the same respect for the Governor of the State, something of the same respect for the permanence of the administrative organization of the State, which we have seen illustrated for over a hundred years in connection with the government of the United States. We have seen it here to our great profit and without the sightest hazard to our liberty as a people.

Now look to the other end of the line. Look at the cities, Mr. Chairman. The cities were organized in the beginning as if they were little States, almost every officer was elected, with what result? There was no efficiency and no unity in the organizations of the cities. Nearly everybody was turned out at every election, and there was no co-operation and unity among the different departments. In this situation the political organizations had to use their power on the elective officials to get them to work together. Anybody that has lived in the city of New York can recall the time when the different public departments were attacking each other in the press, and we had the scandal of a house divided against itself, a city administration working at cross purposes, and no way within the power of the city to prevent it. I ask the members of this Convention to realize this. I do not believe that the Senator from Saratoga, the delegate from Saratoga, is one bit more devoted to popular control than I am, or any other member in this body, but I have learned, Mr. Chairman, that there are some things that a popular vote can do and there are other things that it cannot do. My view of a popular vote is that it is like the stroke of a trip-hammer. It can strike a tremendous blow, and I have never seen any official, whether President, Governor, or Mayor, so firmly entrenched that by a popular vote he could not be turned out; but you cannot carve with a trip-hammer, and you cannot carve with a popular vote. You can concentrate attention on one official, and the public will be done with him, but you cannot concentrate public opinion upon a great number of officials. The man at the head of the ticket, as it has been said, carries in the others, as everybody knows that the minor officials share almost invariably, not always, but almost invariably the fate of the head of the ticket.

Now, Mr. Chairman, to put an end to that situation in our great cities we have made the Mayor the appointing power, and have made him so powerful and influential in the government of the

city, that whenever the people change the Mayor they change the whole government. No other way has been developed in which it could be done, and I venture to say, sir, that the progress in bettering municipal government throughout the United States has been largely due to that departure from the old policy in regard to city government, which has made the city government for the time being responsive to the will of the people. Now, I think, Mr. Chairman, that the Committee's bill should be amended so as to give the Governor the power of appointment without confirmation by the Senate, as well as the power of removal, because if you are going to give these great powers, and that is unquestionably the effect of this bill, you must accompany them with equal responsibility.

Take the locomotive. If you don't give it power, it cannot draw the train, and if you give it the power, it must have the weight, or it will fly the track. The more power you give it the more weight you must put upon it, and that is precisely the logic of this bill; that if you give this power, this great power to the Governor, for it is a great power, you must weight him, weight that power with corresponding responsibility, so that when he exercises that power the people know that from the capitol in Albany, down to the smallest employee in any department over which he has direct control, the Governor may be justly held responsible for the result, and then if there is dissatisfaction, when the proper time comes they can change the character of the State government at once. Only one further thought, Mr. Chairman, and I will be through. I spoke about the necessity for unity in government and for co-operation, and I pointed out how that had been attained in our cities, and in attaining that, let me say that we have increased popular interest in the election of the mayor. Larger numbers of citizens have voted at the elections for mayor in the city of New York, not infrequently, than have voted for the Governor of the State, because they know that they are voting for the man who is responsible for the government of the city. You must have unity and co-operation in the departments of the State if you are to get good results, just as you must have it in the cities. Just as it is in the planetary system. If you have no force of gravity, there would be collisions and disturbances everywhere. Now responsibility to an executive, whether he be mayor, or Governor or President brings about unity, brings about that co-operation which is absolutely essential to good government of any kind, and it makes for that respect and interest on the first of the people in the government which they have set up. I do not think, Mr. Chairman, that the Committee's bill should be amended so as to make the Superintendent of Public Works an elective officer. The

patronage must be somewhere, and the unhapply impression that I have received as a delegate to this Convention is that the government of the State of New York as it has been carried on in recent years has almost wholly been a question of patronage. Where is the patronage to be? Who is to control the patronage? Now, Mr. Chairman, I hope that this Convention will settle this question on a fairer and broader line than that. I think that Senator Wagner yesterday said that the motive behind ripper bills was to get the patronage. But that is not the whole motive, and I ask the Convention to remember that one motive behind ripper legislation is a feeling on the part of every party which has been given power by the people that it ought to have the opportunity to exert that power, and I think that this bill will be patently lacking, if it is not amended so as to give to the Governor with the power of removal, the power of appointment. Then I think, sir, that we may hope to have a State government that will compare in efficiency with the National government and with the best (city) government in the State, and I believe in my heart that it does not now so compare, but that then we will have such a government as will also preserve our freedom, for the sake of which I believe any member of this Convention would willingly die.

Mr. Wickersham — Mr. Chairman, I move that the Committee do now rise, report progress and ask leave to sit again.

The Chairman — It is moved that the Committee do now rise, report progress and ask leave to sit again. All those in favor will say Aye, apposed No. Carried.

(The President resumes the Chair.)

The President — The Convention will come to order.

Mr. M. Saxe — The Committee of the Whole having had under consideration Proposed Constitutional Amendment, General Order No. 59, reports progress thereon, and asks leave to sit again.

The President — The question is on granting leave to sit again. All those in favor of granting leave say Aye, contrary No. The leave is granted.

Mr. Green — Mr. President, my attention, since the morning session, has been called to remarks made by me yesterday which I am sure are incorrectly reported. I did not mean any such reference to the Chairman of this Convention, of the Chairman of this Committee, but, referring to Chairman Tanner, and I did not refer to the Chairman of this Convention or this Committee. There are a few other slight errors which I would like to correct at a later date.

The President — Make a memorandum of them and present them to the Secretary.

Mr. Schurman — On behalf of the committee appointed by the

Convention to convey to the Governor the congratulations of the Convention, I desire to report that Judge O'Brien and myself went before the Governor and presented the congratulations of this Convention. The Governor was very much gratified and asked us to convey to the Convention his sincere appreciation of the compliment.

The President — Before announcing the adjournment the Chair wishes to say to the Convention that we have this week done more continuous work than was laid out in our program. The program adopted by the resolution of the Convention calls for 48 hours of session, and we have, by reason of sitting overtime, beyond one o'clock, beyond half-past five o'clock, beyond half-past ten o'clock, exceeded the 48 hours. So that we can adjourn with clear consciences. The Convention under its resolution, now stands adjourned until ten o'clock Monday morning.

Whereupon, at 2 p. m., the Convention adjourned until Monday morning, August 30, 1915, at 10 o'clock.

MONDAY, AUGUST 30, 1915

The President — The Convention will please be in order. Prayer will be offered by the Rev. J. Addison Jones.

The Rev. Mr. Jones — Let us pray. Oh God, our heavenly Father, who dost beset Thy children with Thy guardian care and holy love, help us to praise Thee and to serve Thee at all times in the spirit of sincerity. Thou knowest us altogether, not as we know one another, but in all the deep things of our life, for all our thoughts and desires, our ambitions and loyalties, reveal themselves unto Thee in their reality. We pray that in loving kindness Thou wilt pardon us for all the offenses for which we are truly penitent; and make glad our souls by the experience of Thy forgiving grace. And now we seek at Thy gracious hands fitness to perform our allotted service. Wilt Thou purify the eyes of our understanding, and quicken us by Thy gracious inspirations and support us with sufficient strength for the demands of this day. And grant that we may so serve Thee through all our days that we may help to bring into this world the reign of truth and righteousness and peace. We ask that Thou wilt bless all those who take counsel for the good of the State and the nations. May their advices and their actions work out for the establishment of righteousness and of peace among all peoples. For Thy name's sake, Amen.

Mr. Wickersham — Mr. President, I suggest the absence of a quorum, I ask that the roll be called.

The President — The Secretary will call the roll.

Upon the call of the roll the following delegates responded: Aiken, Angell, Austin, Bannister, Barnes, Barrett, Bayes, Beach, Bell, Berri, Betts, Blauvelt, Bockes, Brackett, Bunce, Burkan, Byrne, Clinton, Cobb, Coles, Daly, Dennis, Deyo, Dick, Donnelly, Dow, Drummond, Dunmore, Dykman, Eisner, Eppig, Fobes, Franchot, Frank, Green, Greff, Griffin, Haffen, Hale, Heaton, Jones, Kirby, Landreth, Latson, Leggett, Lincoln, Linde, Lindsay, Low, McKinney, Mandeville, Martin, F., Martin, L. M., Marshall, Meigs, Mereness, Nicoll, C., Nicoll, D., Nixon, Nye, O'Brian, J. L., O'Connor, Olcott, Parker, Parmenter, Parsons, Pelletreau, Quigg, Rhees, Rosch, Sanders, Sargent, Saxe, J. G., Saxe, M., Schoonhut, Schurman, Sears, Sheehan, Shipman, Slevin, Smith, A. E., Smith, E. N., Smith, R. B., Smith, T. F., Stanchfield, Standart, Steinbrink, Stimson, Stowell, Tanner, Tierney, Tuck, Unger, Van Ness, Wadsworth, Wagner, Ward, Waterman, Webber, C. A., Weber, R. E., Weed, Westwood, White, C. J., Wickersham, Wiggins, Williams, Wood, Young, F. L., President.

Mr. Brackett — It should be noted — I am not sure that he has been formally excused before now — in the Record in order that it may show that he has not neglected his duties here, that Senator Victor M. Allen has been desperately sick during the greater portion of the time that the Convention has been in session. He was here a short time the other day, but it was only recently that he has started on convalescency, and he is not yet sufficiently strong to come here and sit until the finish, and therefore I hope this minute may be made, so that it may be recorded that he has been, is and will be excused during the balance of the session, for this reason.

The President — Mr. Allen has been excused upon that ground already and the Record will so state.

One hundred members of the Convention having answered to the call of their names, a quorum is declared present. Are there any amendments to the Journal as printed?

Mr. Brackett — Mr. President, might I suggest to the majority leader as to whether or not he does not think it advisable to have an open call of the Convention?

The President — The only thing in order now is amendments to the Journal.

Mr. Brackett — Mr. President, I can move an open call of the Convention at any time. That is in order at any time. We ought to have not only a quorum, but a reasonably full attendance. I have no wish to discommode any member of the Convention by

moving that, but I should suggest at least that the leader might give notice that he is liable to move an open call at any time.

Mr. Wickersham — A call of the House having disclosed a presence of a quorum and other members coming in constantly, I think it unnecessary to do more at present.

The President — Are there any amendments to the Journal as printed? There being no amendments proposed the Journal is approved as printed.

Presentation of memorials and petitions.

Mr. F. Martin — I have a memorial which I have been asked to present. I do so by request.

The President — Referred to the Committe on Bill of Rights. Any further memorial or petitions? Communications from the Governor and other State officers. Notices, motions and resolutions. The Secretary will call the roll of districts.

Mr. Griffin — On Saturday I made application to be excused at the session this morning. I was in error as to the date of my engagement and I ask that the excuse apply to to-morrow.

The President — All in favor of granting the excuse as of to-morrow instead of to-day will say Aye. The request is granted.

Mr. Brackett—I do not wish to incumber the Record with anything that is useless, but I hold in my hand a letter from a distinguished justice, of the Supreme Court, a member of one of the Appellate Divisions, which I deem it my duty to call to the attention of the Convention by reading into the record. I shall take but a single minute. It is dated Saturday, August 28th.

Supreme Court, Appellate Division, Third Department.

OGDENSBURG, N. Y., *August* 28, 1915.

Senator EDGAR T. BRACKETT, *Constitutional Convention, Albany, N. Y.:*

DEAR SENATOR BRACKETT.— Upon arriving home this morning I found a telegram saying that the official referee bill is in danger. I had not believed that the Convention was liable to pass such a bill. It seems to me wrong in principle and there is very little in my judgment that can be said in favor of it. If a man's usefulness as a judge terminates at seventy, I can see no good reason why he should perform the same duties as a judge under the name of official referee. I think the judges have been well treated and are satisfied. They have held the best office in the profession at good pay and I can see no good reason why the pay should continue after the statute retires them from the office. Judges who do not favor such legislation would undoubtedly refuse to qualify, but the Constitution should not put a judge in such a position. It is better for him to understand that when he reaches seventy he

is off the payroll. I am earnestly opposed to the bill. I cannot believe that the judicial body of the State favors it. It may give satisfaction in certain directions, but I believe the good sense and conscience of the judges of the State, if canvassed, would be against it. I understand you are opposed to the bill and I am simply writing to encourage you in the opposition. The telegram I received said the matter was to come up for consideration Thursday, but I see nothing in the daily papers indicating that it has been acted upon. I remain,

Sincerely yours,

Mr. Wickersham — Will the gentleman give the name of the writer?

Mr. Brackett — I will, if it is desired.

Mr. Wickersham — Surely, surely.

Mr. Brackett — It is Judge John M. Kellogg, of the Appellate Division of the Third Department, one of the longest serving and most distinguished judges of the State.

Mr. J. L. O'Brian — Mr. President, the Committee on Rules submits the following report.

The President — The Secretary will read.

The Secretary — The Committee on Rules recommends the adoption of the following special rule: Resolved, That when the Committee of the Whole resumes consideration of General Order No. 59, all speeches after 3 o'clock p. m. be limited to ten minutes each; the final vote to be taken not later than 10 o'clock p. m.

Mr. J. L. O'Brian — Mr. President, I move the adoption of the rule.

The President — All in favor of the resolution will say Aye, opposed No. The resolution is agreed to. Any further reports of standing committees? Reports of select committees. Third reading.

Mr. Wickersham — Mr. President, I move that the calendar of third reading be suspended for the day.

The President — All in favor will say Aye, contrary No. The motion is carried. Unfinished business in general orders. Special orders. The Convention will go into Committee of the Whole to resume consideration of the special orders of the day.

(Mr. Saxe resumes the Chair.)

The Chairman — The Committee will come to order.

Mr. Tanner — I rise, Mr. Chairman, not for the purpose of taking the time of the Committee in speaking, but to offer one or two amendments to the bill which I think should be before the Committee before debate begins. On page 3, line 26, after the word " officers " insert " He shall also make such special examinations and report as from time to time may be required by either

house of the Legislature." Mr. Chairman, I offer the following amendment to section 7, page 4, line 3, strike out the words "to consist of three members"— line 4 and insert "or commissioner as may be provided by law."

The Secretary — Section 7, page 4, line 4, strike out "to consist of three members" and insert "or commissioner as may be provided by law."

Mr. Tanner — Now, Mr. Chairman, I want to read that over, to be sure the Clerk has it. The section as amended reads, "The head of department of taxation shall be a State tax commission or commissioner, as may be provided by law." Mr. Chairman, I offer the following amendment to section 9: On page 4, line 11, before the word "assigned" insert "from time to time."

The Secretary — Section 9, page 4, line 11, before the word "assigned" insert the words "from time to time."

Mr. D. Nicoll — Mr. Chairman, as I listened on Saturday last, or Friday evening to the course of this debate, I was torn with varying emotions. When I saw that the great majority of this Convention were divided into contending camps, and heard the compliments which passed to and fro between the respective champions in debate, I said to myself: "Oh, how sweet and pleasant a thing it is for brethren to dwell together in unity." But I was especially touched, Mr. Chairman, by the passionate appeal from the gentleman of Broome to be admitted to the starry firmament of the Constitution. I was peculiarly affected by his pathetic plea. It was to me like the cry of a lost soul for paradise, claiming the right to sit down with the Seraphim and Cherubim. But, as a friend of the people and a practical politician of great experience, our brother from Broome must see the difficulties which confronted the Committee. With the "Prohibition party going strong in the country, and with half of the Democratic party devoted to the consumption of grape juice, you can hardly expect constitution-makers to constitutionalize the State boozorium. It is really asking too much. I have been, however, thinking that perhaps your arguments might have some effect on the hard hearts of the Committee, and I have been considering in case they yielded, just where to put you. And it seemed to me that, inasmuch as this is a scientific amendment, and arranged on the principle of cause and effect, that we should create a new department entitled "Excise and Prisons." If what modern sociological writers tell us is true, why our prisons are filled by the consumers of alcohol, and it seems to me that the head of the Department of Excise and the head of the Department of Prisons could very properly be joined together. Now, Mr. Chairman, I don't rise for the purpose of supporting this amendment in its entirety, but I propose

to call to the attention of the Committee those parts of it which I think are deserving of support, and those which seem to me to be deserving of criticism. This amendment proposes to eliminate from the Constitution all of article V, except two sections, and to substitute for it a brand new article. That, of course, is the most ambitions proposal yet made to the Convention. Hitherto we have been contented with catching the old document up, revising it, here and there, cutting out superfluities, and adding things that are believed to be useful; but here is a proposal to practically reconstruct the government of the State so far as its administrative officers are concerned. Now, the question is, the first question that naturally arises is, was this necessary? On that point, I don't believe any one can examine the questions, the figures submitted by the Committee in their report showing the enormous increase in the governmental agencies since the Constitution of 1894, from 39 to over 160, notwithstanding the fact that neither the wealth of the State nor the increase in population has kept pace with it; I don't believe that any one can read the testimony of our State officers and of all the publicists and students of government who appeared before the Committee without coming to the conclusion that some such measure as this was necessary in the present situation. Here we have the most complicated and bewildering State government with divided responsibility, with duplication of powers, with overlapping functions, lack of co-ordination and co-operation, lack of system, and all those things which make for lack of efficiency and economy. My friend, Mr. Quigg, says in the course of his debate, reading from the constitutions of several States, "Why, there is nothing like this under the sun. You don't find any such scheme of government in any one of the States of the Union." That may be so. But I say in reply that in no State of the Union is there anything like the present government of the State of New York, with its 169 commissioners. That is the reason. In the last twenty years, as we all know, there has been a great demand upon the government for the increase of its activities and it has taken the form of these different commissions, and governmental agencies, without the Legislature keeping in view the necessary relations between them. That has resulted in the form of government that we have to-day.

Mr. Quigg — Of course, Mr. Nicoll, I was not arguing in anything I said against this plan of combination of these bureaus into departments. I think it is scientific, I think it is sensible. I cannot oppose it. I was only arguing in favor of the election of the more important officials.

Mr. D. Nicoll — That is how I interpreted your remarks and

the remarks of other speakers. In fact, it seemed to me that there was a sort of a general agreement that some such plan as this is necessary in order to escape from the consequence of our present form of government, and, of course, the next question is, is this a sensible and logical plan? So the great purpose which the Committee had in view was to bring about a more efficient form of government, a simpler form of government; and, if rightly administered, a more economical form of government. That great ultimate purpose is sought to be accomplished, first, by applying to the situation the theory or doctrine of simplification; and, second, of responsibility with power. Those are the keynotes of this amendment; first, simplification; second, responsibility with power, leading in the end to a more simple, more efficient, more economical government of the State, in which the people get the maximum of government at the minimum of cost. Now, gentlemen, let us take it up from these two points of view, first from the question of simplification. The arrangement which the Committee has made of the different functions of the government of the State seem to me to be sane, sensible, reasonable and logical. We have here, first, two elective officers, Justice and Finance. We have again, Conservation, Education, Civil Service. Those great departments where the Governor has the power to appoint but where the officials may not be removed in the summary manner provided for the other branches; and then we have what the report of the Committee very properly terms the several departments constituting the arms of the executive department, namely, Public Works, Health, Agriculture, Charities and Corrections, Banking, Insurance, Labor and Industry, State and Treasury.

Now, it is not, after all is said, a very radical amendment. All it amounts to is taking three constitutional officers out of the elective class and putting them in the appointive class and transferring them to the Constitution, all the different departments which are now defined in the consolidated laws. But on the whole it seems to me to be a very intelligent and rational and appropriate treatment of the whole subject, well designed to accomplish the great ends which the Committee had in view. Now, while I do not intend to stop now and do as some of my predecessors in debate have done, go over these different departments — perhaps I am not as well qualified as some of the other speakers to discuss them, I have not that intimate knowledge of their respective functions which comes from a long period in executive or legislative office — but certain things have appealed to me, and in one particular is the suggestion of Mr. Wagner, that the auditing department should be elected by the Legislature and should not be the subject of appointment by the Governor. It seems to me

of first importance that the auditing officer of the government should have his title from some other source than from the chief executive. Where can you put it better, unless you elect him, which is undesirable, unless in the hands of the Legislature who by this Constitution have been constituted the guardians of the executive officers? Where can you put it better than that? Now, gentlemen, looking at this scheme as a whole, without going into the discussion of these particular departments let us consider some of the objections that have been made. I take up first the fundamental objection, one of the fundamental objections of our friend, the Delegate from Columbia county, who says that these offices ought not to be in the Constitution at all — ought not to be there at all — that you ought to leave them where they are now, with the Legislature and in the Consolidated Laws and that is a good enough place for them, and that you ought not by a stroke of the pen elevate all of these different functionaries and dignitaries to constitutional office; and he points out the fact that the Federal Constitution has no such provisions as these but that the great arms of government are created by Congress. Well, that to my mind, that objection has some merit, and it would have more merit were it not for two things, first, the fact that something must be done as is done by this amendment, to restrain the tendency of the Legislature to keep on multiplying these governmental agencies and commissions. Unless you do that, you do nothing. Unless you do that, the same scheme of government will not only go on, but will be extended. Whenever anybody comes along with the proposal for a new activity of government we create a new commission. Now, how have the Committee treated that subject? They put this framework into the Constitution. They put in here this skeleton of government and they say to the Legislature you shall not go beyond that by creating new commissions. If you want to create any new activities you are not prevented from doing that, but you must do it and assign it under one of these departments; there is where it belongs; there is where it must go — and that is the first reason, it seems to me.

Mr. Quigg — What good does that do in the way of economy, if the Legislature can keep on creating bureaus and commissions? All these 162 now are to be assigned and are retained in their present form? And if the Legislature can go on adding to them and simply sprinkle them through any of these departments what good, in efficiency and economy, is there?

Mr. D. Nicoll — One good is that when the Legislature creates such a commission it will keep in mind the relation of this new thing to some one of these departments, so that you can have something like proper and logical relations between them and some

measure of responsibility. Now, gentlemen, I approach a very delicate matter and that is the objection in this bill on the ground that it is a compromise between the first bill and the bill in the form in which the Committee presents it. I say that is a very delicate matter. I feel that I am treading on delicate ground when I speak about it, especially as I have never been admitted to the real inside secrets of the trouble. I look at it only as one on the other side of the fence. But, treating the subject generally and intentionally defending the idea of compromise, I say that in a convention composed of so many different points of view, so many different lines of thought, so many different associations and connections, so many different interests and relations, it is impossible to expect that all men should agree. This great question about the Comptroller, as to whether he should be appointed or elected, has been debated in this State ever since the Convention, I think, of 1821; certainly it occupies a considerable part of the debates of '46 and '67. It has been going on and we have had different points of view with regard to it. The Committee, carrying out what I believe to have been a very logical notion with regard to the relation of the Comptroller to the other branches of government, provided in its first bill that the Comptroller should be an auditor only. The first bill provided, as some of the delegates are aware, that there should be a department of audit and control, the head of which should be the Comptroller. All he was to do was to audit and verify the financial transactions of the State and of the civil divisions thereof, and provide an official statement of assets, liabilities, revenues and expenses, reporting from time to time to the Legislature and various State departments. Now we have the Comptroller in the last bills, and in what I call the compromise bill we have him in the full and complete panoply of the powers which he now enjoys under the Constitution and laws. Now, gentlemen, my understanding is that this result was brought about because it was pointed out that it would create altogether too much political disturbance to interfere with the exercise of the present powers and duties of the Comptroller and that this has caused our Committee a great deal of trouble and heart burnings. I can say to them now that if they had taken me, or perhaps any one of the delegates of the minority from Manhattan into their confidence in the State, we could have told them that their proposition in this Convention to deprive the Comptroller of his present powers was a perfectly hopeless one. We could have pointed out to them that they were trying to accomplish the impossible, and that they were running up against the Wily Solons of the City of Churches, who make a specialty of having the financial officers of government, whether in State or in city.

All they had to do was to come to us and we could have told them what our experience was in the city of New York. Why, we have been trying to get a Comptroller in the borough of Manhattan, ever since we had the greater city. We never succeeded in doing it. Although the borough of Brooklyn pays 25 per cent, as I have had occasion to say in this Convention before, of the taxes of the greater city, she claims as her right and we have yielded to her that right, the financial officer of government, and we have had nothing but Brooklyn comptrollers since the city began. Now, once in a while we have been allowed to elect a mayor or two from Manhattan, but those have been few and far between. So, I say, if the Committee had only been here at the time of the discussion of the Judiciary Article and had heard my friend, Mr. Steinbrink, get up and say that he represented the most powerful political organization in the State, they would have known what folly it was to try to take away from the present Comptroller, a financial officer and a Brooklynite, the power which he possesses at the present time. Of course, gentlemen, it was a very trying moment in this Convention, when our friend, Mr. Quigg, read the letters of the Brooklyn delegation, almost all of the fourteen, except the Wily Ulysses — "In response to the letter from the Short Ballot Association asking them how they stood on the question of the short ballot." They had been asked how they stood on the short ballot proposition, and we all know what the short ballot means from the standpoint of the short ballot association. It does not mean a Comptroller continued with the patronage that he has now, or even the Attorney-General. It means only the Governor and Lieutenant-Governor. It was certainly a very unfortunate thing that the replies to the demand of the Short Ballot Association committed the writers so flatly. When we think of the predicament of our Brooklyn friends, I am reminded of the old rhyme:

"Do right and fear no man,
Don't write and fear no woman,"

even the old women of the short ballot association. Now, Mr. Chairman, so much for the proposition that it is a compromise bill. Now, what is the next objection to it? The next objection is that it makes the Governor a Czar. He is to become a Czar all of a sudden. This little gentleman who occupies the executive mansion for two years, perhaps four years, is to be suddenly converted into a Czar. Well, I would not characterize the argument of any delegate in this Convention as absurd and puerile, but if I was attempting to speak of it lightly, I would come pretty near using those words. Why, as a matter of fact, this Convention up

to date has already shorn the Governor of a great deal of his power, as I had occasion to point out in the discussion of the budget article. We have taken away from him the great power of sending in emergency messages. And we have all heard in this Convention what a great power that was. We have taken away from him, and we have given to the Legislature as against him, the right to assemble themselves for the purpose of impeachment and under rules made by themselves, while up to date they could not come together except by his message.

Not only that, but in the cities amendment we have debarred him from having anything to do with the question of charters of cities, providing for their nullification, it shall be by the joint resolution of the Legislature, with the Governor having nothing to do with the subject. Not only that, but look at what enormous powers have been conferred upon the Legislature by this very amendment. That is the body which is really going to reconstruct this Government. What the Committee proposes is only a framework or a skeleton, and the Legislature is going to put on the muscles and the veins and, ultimately, the clothes. The great power of distributing and assigning functions is left in their hands and not in the hands of the Governor at all except by the exercise of his veto. So, when you come to consider it, when you come to balance the work of this Convention, my humble judgment is that even if you give the Governor this great power of appointment outright, you have made him an officer of less importance rather than an officer of greater importance. Someone else said it is a dangerous thing to do because you may elect a bad Governor, you may have a freak Governor or a bad Governor. Of course, gentlemen, that is one of the hazards of democracy, but my own sober, settled thought is that this amendment is calculated, if not designed, to give us better men for Governors. I mean to say that the political parties in this State will hesitate a long time before they will put the great powers which we now confer upon the gubernatorial office in the hands of a freak or a knave. It ought to make for better Governors. I can see the politicians discussing the subject and saying to themselves, "well, we might have recommended this man for Governor under the old Constitution but we cannot do it now with the great powers which the Governor possesses." So that, on the whole, it seems to me to work for better Governors. It is said that there is going to be too much power given to one of the departments, and the particular department complained of is the Department of Public Works. That is said to be too big, and somebody said the Superintendent of Public Works will be a bigger man than the Governor himself. Well, in the first place, gentlemen, my notion is — and I have no

doubt all of you have very much the same — that the great public works of this State, the canals and highways, will be substantially completed before this Superintendent of Public Works assumes his office — so it is reported. I got that from the testimony given by Mr. Duffey, the present Commissioner of Highways, before this Committee on Organization. I understand that after the completion of the highways, or after the expenditure of the $35,000,000, within possibly two years, the Highway Department will be chiefly a maintenance department, expending some four or five million dollars in the maintenance of the highways. We all know that the barge canal terminal work will practically all be completed, certainly within the next two years. It is not as if you were creating a department that was going to spend $200,000,000. You are creating a department which is administering public works already constructed, and upon which only a maintenance charge of four or five millions a year will exist.

Mr. A. E. Smith — I know that the gentleman would like to have the record right on the matter. There is $19,000,000 of canal terminals that has not been touched at all yet; in fact, the property in some instances has not been acquired for the construction of the terminals. That amount remains to be spent, plus $7,000,000 of the $27,000,000 bond issue that is to be submitted to the people this fall, plus about $40,000,000 of the second $50,000,000 bond issue for good roads.

Mr. D. Nicoll — Those will be completed by about a year from now.

Mr. A. E. Smith — Oh no.

Mr. D. Nicoll — A year and a half?

Mr. A. E. Smith — Oh no.

Mr. D. Nicoll — It doesn't make any difference if I am wrong. That is the information I got from Mr. Duffey. Those figures do not scare me at all. You, sir, and I come from the city of New York, where we spend $295,000,000 every year. A little matter of $27,000,000 doesn't alarm us any.

Mr. A. E. Smith — If the gentleman will bear with me just a second I would like to say the figures do not scare me, but the proposal to be able to spend it all in two years is what gives me a slight fright.

Mr. D. Nicoll — It don't disturb me at all, as I look over our city government. The State government now disburses $42,000,000 a year, according to the figures in the report of the Committee. Add to that the interest on the public debt, and the sinking fund provision, and it spends $54,000,000 a year. That is all it amounts to, gentlemen. Why, it is chicken feed to us. We spent in the city of New York, I think, the last

year, $304,000,000. I said $295,000,000 a few minutes ago, but I think it is $304,000,000. Look at the departments we have there. See how our Czar administers the government. Why, we have city departments — we have thirteen city departments in the city of New York. You are going to have seventeen here, or subtracting the two elective officers, fifteen. We have thirteen. And all your departments are going to spend something like $42,000,000. We have fourteen departments in the city of New York now, spending $74,000,000 a year, and big departments, too, just as big as this Superintendent of Works will ever be — bigger. Why, we have the Department of Bridges, which spends a little matter of $15,980,000 a year. The Department of Corrections, that is less, $1,400,000 — no I must have this wrong. The Department of Docks and Ferries, from $8,000,000 in 1910 down now to $4,500,000. The Department of Health in the city of New York expends $10,000,000 a year. The Department of Police in the city of New York expends, under one commission, $17,000,000 a year. The Department of Street Cleaning in New York expends $10,000,000 a year. And the Department of Water Supply, Gas and Electricity spends $11,600,000 a year. I don't think that anybody when they see these figures and consider that in this State we have already a simple form of government, where the heads of the departments are appointed by the chief executive and who are spending twice and three times the amount of money that will be spent through the State departments, that we should have any apprehension about the size or the power of any of the departments we are creating.

And here is another consideration that occurs to me, in passing. These heads of departments are to be removed by the Governor at his discretion, at his pleasure. Not only that, but the Committee has introduced a new, and I believe a very valuable feature. They are to be impeached by the Legislature. So that now they are open to attack from two points of view; first from the Governor, and then from the Legislature, a provision which is unknown to our laws before. We don't trust it to the Governor altogether; we leave it to the Legislature who are the critics of the Governor, to say whether or not the Superintendent of Public Works or any other superintendent is faithfully administering his trust. Now, gentlemen, so much for the consideration of this subject from the point of view of simplification. Of course, this is a very insufficient discussion of it. I will leave the pointing out of objections and difficulties, as I said before, to others who have had larger experience than mine, and I will go on to discuss it from the point of view of responsibility with power. Now, gentlemen, as I said before, when you discuss this from the standpoint of responsibility with power, you are not doing anything very radical. You

are simply taking out of the elective class and putting into the appointive class three officers, the Secretary of State, with a salary of $6,000 or $8,000, I forget which; the State Engineer and Surveyor, with a salary of $6,000 or $8,000; and the State Treasurer, with a salary of $6,000 or $8,000. The whole of them together amount to $24,000 a year in salaries — of exempt positions under civil service regulations, there are not more than forty or forty-five in all of the three departments. Now that is all you are doing. You are taking out of the elective class and putting into the appointive class those three officers. Now, gentlemen, this whole subject of electing or appointing these officers, as was said by the distinguished delegate from Saratoga in the course of his oration, his magnificent oration, Saturday, this whole subject has been under discussion ever since the Convention of 1867. Mr. Dykman read to you on Saturday a quotation from a message of Governor Hoffman, in 1872, which insisted upon some such form of simple and reasonable government as the Committee is now attempting to get. But you may say, some one may say, Well, Governor Hoffman was an extremist in politics and he looked at it perhaps from the Democratic point of view, or from the point of view of his time perhaps, but it does not carry the weight that it ought to. But let me tell you what happened. These sentiments of Governor Hoffman's were expressed in a message to the Legislature and he advised the Legislature instead of calling upon the Constitutional Convention to take up the work of the Constitutional Convention of '67 to appoint a commission composed of distinguished men of this State of both parties and invite them to proceed to the consideration of those measures which had been discussed in the Convention of '67, but which had been rejected by a defeat of that Constitution by the people in 1869. Now, this committee appointed by the laws of 1873 consisting of sixteen Democrats and sixteen Republicans. This committee had this whole subject under consideration and they reported an amendment as follows: The Secretary of State, the Attorney-General, the State Engineer and the Surveyor shall be appointed by the Governor with the consent of the Senate, to hold the office until the end of the term of the Governor by whom they shall be appointed and until their successors shall be appointed. No person shall be appointed to the office of the State Engineer unless he is a practical engineer.

Now I place great reliance upon that constitutional proposal of that committee on account of the material of which it was composed, composed as it was of 16 most distinguished Democrats and 16 most distinguished Republicans, and they, away back in '73, now almost forty years ago, advocated the short ballot in some

form, very much in the form it is now proposed by this Committee. But, gentlemen, that is not all. Certainly not only his political friends but his political opponents will admit that Grover Cleveland was a great servant of the people, truly devoted to their interests and to the cause of good and efficient government, and I read you now on this subject a quotation from one of his messages: "An absolute and undivided responsibility on the part of the executive appointing powers accords with correct business principles, the application of which to public affairs will always, I believe, point the way to good administration and the protection of the people's interests." And I might go farther if time permitted, and quote from other governors and administrators both on the Democratic side and the Republican side. The real difficulty with this amendment as I see it is that it does not go far enough. What it should have done was to provide that the Governor and the Lieutenant-Governor should be elective and all the others appointive, but it accords, however, with perhaps the Democratic platform, although as I read it the Republican platform goes farther than the Democratic. But at all events it does not go very far. It leaves the Comptroller and the Attorney-General still in the class for which we have to vote, so that instead of voting for six or seven governors as we do now we shall then be voting for three governors — for the Governor himself, the Comptroller with his vast power and the Attorney-General with his vast power. Well, now, it does not meet, in my judgment, the full demand of those who believe in the short ballot, and yet on the other hand no one can deny that it is a long step forward. After all, great reforms have to come slowly I find. There is no use of being in such a great hurry about it because you can't travel fast, particularly when they are constitutional reforms. The folly of one generation is the wisdom of the next. The stone which the builders refused in one convention becomes in the next convention the head stone of the corner, and that is the way it goes. You cannot expect to accomplish everything at once, and must accept the good the gods provide. And yet, gentlemen, the most remarkable part of this discussion, the most remarkable part of this discussion thus far, is that although this amendment goes such a very little way, it has excited the most intense antagonism on the part of the delegate from Columbia, and the delegate from Saratoga, whose oration of great force and length on Saturday afternoon, denounced us all, Democrats and Republicans alike, as being engaged in a conspiracy to steal away the liberties of the people and establish an autocratic and oligarchic form of government. He said because we were going to adopt this little measure of reform, so disappointing to the real advocates of the short ballot, that we were actually pulling the whole

temple down and striking a blow at the very foundation of our Republican system. Ah, I must say to my dear old Cincinnatus from Saratoga, the old order of things gives place to the new and we of the next generation must listen to the music of progress and keep step with the march of events. If this amendment shall pass, which I believe it may, because it seems to me that up to date, the combination in the Convention is too strong for the old horse and the mountain lion, I say if this Convention shall pass this amendment I want to say this to my old and venerable friend from Saratoga: Content yourself with the motto of Cato to his son: "When vice prevails and impious men bear sway the post of honor is a private station." Retire, sir, retire, sir, to the green pastures and the still waters of your beloved farm and, removed from the pomps and vanities of this wicked world and all the sinful lusts of the flesh, devote the remainder of your days to the cultivation of its fertile soil, your hand never off the plow, except when you whip up the old horse, and your eyes never off the furrows except when you lift them to Heaven.

Mr. Brackett — Does not the delegate know that there are six months of the year up in our bleak and frozen north when we cannot turn a furrow unless we dynamite it?

Mr. D. Nicoll — I was just coming to that.

Mr. Brackett — You are praying for that season of the year?

Mr. D. Nicoll — I was just coming to that. Of course my apostrophe has been interrupted, but I will steam up again as fast as possible. I will turn on the current. I was just about to continue my remarks and was about to say that after the day is over, call around you by the old stove the little people of the hills and tell them the sad and harrowing tale of this Convention: How you came here with the determination to protect the peoples' rights, and, like old Pugstyles in Parliament, raise the devil with everything and everybody, and how you were defeated in your patriotic endeavors by the machinations of the people's enemies and by a gross betrayal on the part of those on whom you counted as friends, and then, sir, wearied with your virtuous labors, wrap your mantle — wrap your shirt around you, and lie down to pleasant dreams, dreaming of a Heaven where they have elections every day, where even the doorkeeper in the House of the Lord is elected, where no man is ever appointed to office, where all ballots are long and all terms are short, where only the spirits of the Old Guard that never surrenders are admitted and where the souls of the ungodly federal crowd are stopped at the gate. Now, Mr. Chairman, an amendment has been proposed by my associate, Mr. Stanchfield. He proposes to the Convention that

we shall cut out the words " by and with the advice and consent of the senate." That brings up to us very sharply the question as to whether or not we are going to accomplish very much by this reform unless we give the Governor the appointing as well as the removing power. When I say this, I make an appeal to the practical experience and intelligence of every delegate in this Convention. Unless we give the Governor the appointing power without resort to the Senate, what are we doing except constituting again the council of appointment such as we had in this State until the year 1846.

What are we doing except constituting a body of twenty-eight men, twenty-seven in the Senate and one in the Executive Chamber, for the purpose of filling these offices? Why, you know exactly how it will be. The Governor is elected and it comes to the question of filling these fifteen places that are provided for in the Constitution. The Governor wants A. B., we will say, for commissioner of agriculture. Some one of the Senators — and every one of them will have a candidate — wants C. D. The Governor wants John Doe for Insurance, and some one wants Richard Roe for Banks. How can it operate otherwise except by the Senate or a committee of the Senate saying to the Governor "if you will appoint so and so, we will confirm so and so." It cannot operate in any other way unless men change their natures and are born again. So that, instead of having the Governor appoint, as he does now, you are going to have twenty-eight men at the head of this government, responsible for all these great executive arms. I think we shall have gone only a little way in bringing about simple and responsible government if we stop where this amendment in its present form suggests that we stop. We ought to go one step farther and allow the Governor to have responsibility with power, which alone tends in the direction of good government. Well, gentlemen, even a greater embarrassment may arise in case the Governor and the Legislature be of opposite political parties. I don't need to tell you as practical men what might happen then. The Governor has power to remove, it is true, but he might remove a public officer and at the same time that he removed him send to the Senate his nominee for appointment, but would his nominee be appointed? He would, if men were ideal and patriotic and were not for a moment, day or night, influenced by a selfish consideration or private interest. What does experience show? You must recollect that the Public Officers Law provides that the first deputy may continue to exercise the functions of the office. So that if the Governor removes and appoints and the Legislature refuses to confirm, the office goes on with the first deputy exercising the functions. Well now,

gentlemen, there is one word more. That is, experience has taught us in this State and in other States, that you cannot have responsible government, such as we are aiming at here, without giving the executive the full power of appointment. It was tried out in the city of New York twenty-five years. My whole young days were passed under that kind of government. Then we gave the board of aldermen the power of confirming appointments of the mayor, and we were in a state of confusion all of the time, and the result of it was that the mayor never did and never could make the appointments that he wanted because he could not get the board of aldermen to confirm them, and it resulted in the introduction of people into office of a very inefficient kind and unfit kind. And, for all these reasons, gentlemen of the Convention, my belief is that it is of paramount importance that we should adopt the principle of this amendment and give to the Governor full power of appointment. You may not be able to go any farther than you have in the way of making these elective offices appointive, but this thing you can do, and in the interest of good and economic government, you ought to do.

Mr. Burkan — Mr. Chairman, and gentlemen of the Convention. That there is confusion in the various departments of the State government no one can deny. That there is an overlapping of functions, with various departments added, one after another, without the application of any scientific rule, which has resulted in extravagance, has resulted in waste, sometimes in corruptions, cannot be denied; and in so far as this bill before us has attempted to consolidate the departments that bear relation to each other, that have similar functions to perform, in so far as this bill has attempted to define the nature, the scope and jurisdiction of each department, it is an excellent bill and I give it my hearty approval. The creation of one department after another during all these years has undoubtedly created a condition of chaos, and the time has come for the making of some orderly arrangement so that the citizens as well as the State may be protected. But I am opposed to this bill, so far as it constitutionalizes the principle of the short ballot. Short ballot is not a new proposition in this State. We lived under the short ballot for a number of years and the people repudiated the short ballot in 1846. We all know that from 1801, the Governor and the Lieutenant-Governor and the members of the Legislature were the only persons who were elected, and we know that the Governor arrogated to himself all powers and the right to appoint not only all the officers of the State, but as well the county officers, and even the mayors of the cities. We know that a most disgraceful and scandalous controversy took place in this State which form the darkest pages of the

history of the State, concerning the distribution of this vast patronage. We know that the Governor and the council were constantly bickering, bartering, dickering, and quarreling as to the dispensation of the patronage coming under the control of the Governor. We know that 15,000 jobs had to be distributed by an incoming governor and we know that disgraceful scramble that was made with the inauguration of each Governor for the division of these spoils. We know that this condition went on and men were appointed to office, not because of their fitness, not because of their character or qualifications, but simply because they were personal friends, relatives, henchmen or heelers of the party in power. They used this weapon for the purpose of entrenchment and for the purpose of keeping themselves in office, until the Convention of 1846, at which time universal suffrage prevailed in the State of New York the people of the State rose up in their might and demanded a change. In that Convention, the delegates listened to the demands of the people, to their deep and sullen resentment at this outrageous situation, submitted a constitution to the people of the State, containing a proposal which gave back to the people the right to elect all of their officers, the right to vote for their State, county and municipal officers.

In an address that was submitted to the people inviting them to vote for this Constitution, the following significant statement appears: "The most important State officers have been made elective by the people of the State, and most of the officers of the cities, towns and counties are made elective by the locality they serve. They have abolished a host of useless offices. They have sought at once to *reduce* and *decentralize* the patronage of the executive government." Now, if the short ballot is good, if it fixes responsibility, why did it fail up to 1846 and why did it not fix responsibility for the administration of affairs until it was discarded as useless and inefficient. Up to 1846 only one man was responsible, the Governor. He was responsible to the people for his appointees. He had the selection of his cabinet and of his other officers. He did the picking. Nevertheless, it was found that these officials, not responsible to the people themselves, but responsible to the Governor, were derelict in their duties, were corrupt and betrayed the trust imposed in them by the Governor. It became a scandal and a byword. The people at the first opportunity took back the power and demanded the right that they should themselves select their officers, and hold them strictly accountable for their actions in the administration of their respective offices, not to the Governor, but directly to the people themselves. Now, that is a good, wholesome Democratic principle and that has been the principle of the Democratic party from the

time of Thomas Jefferson. The Democratic party is opposed to concentration, and the centralization of power in the hands of any one man. During the period from 1801 to 1846 you had in this State the same condition that you have in Russia, or in Germany to-day. You had bureaucracy. Bureaucracy was rampant throughout the State. Those in power tyrannized over the people; they oppressed the people and so the people threw the principle of the short ballot into the scrap heap. And so, if you go back to this principle you are going to have the same situation that you had up to 1846. Now, my friends, a good deal has been said in this Convention regarding the Democratic platform. It was stated that we pledged ourselves to support the short ballot, and that, consequently, that pledge is binding upon every Democrat in the chamber. Well, I for one refuse to be bound by that pledge. I yield to no man in my loyalty to the Democratic Party. From the time of my first vote I supported Democratic principles and I voted for Democratic candidates, but when a plank is adopted and made a part of the Democratic platform and I feel it is derogatory to and is not in harmony with the sentiment of the people; if that plank does not express the views and sentiments of the people; if it is not in accord with their aspirations; then I reserve the right to denounce that plank and characterize as a betrayal of the trust reposed in the men who had the framing of that plank. And I say those Democrats in this chamber who rely upon that plank, and who in accord with that plank vote for this measure will be betraying the sacred trust imposed in them by the people. The bill before you does not truly represent the principle of the short ballot. As I understand the short ballot principle it means the election of a governor and lieutenant-governor only and the appointment of all the other State officers. The fourteen holy men from Brooklyn and the apostles of reform have gotten together, and through bartering and through deals, negotiations and log rolling, have extended the principle, so that instead of having two elective officers they have four. That is the Comptroller and Attorney-General. They have dropped three unimportant officers. But those who are in favor of the short ballot are not content with this proposal. They have denounced it. One H. S. Gilbertson, the secretary of the New York Short Ballot Association, in an interview to the Morning Times said as follows: "When the committee prepared its original report, it seemed necessary to meet the force of the opposition by retaining two officers on the elective list — the Comptroller in his capacity as an auditor, and the Attorney-General. Now comes Comptroller Travis with the force of the Brooklyn Republican machine, and he forces a complete reversal of the original program in so far as

it affects the State's chief fiscal officer. The auditing function, under the new compromise, will be under an appointee of the Governor, and the tax-collecting functions, where the great mass of patronage lies, will be retained by the elective Comptroller. The opposition is thus unmasked. The plea for an independent Comptroller never was really based on an honest desire for independent audit, but wholly on the desire to keep a mass of patronage in the hands of an obscure elective officer, where the politicians can get at it easily. Will public opinion allow Comptroller Travis and his Brooklyn delegation to get away with it?" Are Democrats in this chamber to be party to this nefarious scheme? Shall the Constitution be prepared under such circumstances? Shall amendments be proposed after barters and dickers for the division of spoils and patronage? Is that a Democratic principle? I, for one, refuse to be a party to any such proposition; I condemn any proposition that is presented to this House as a result of barter and compromise. The people's rights have been bartered away. If the short ballot is good, if it is a proposition that is necessary for the people, for their protection, for an efficient and honest administration of the affairs of this State, why should it be bartered away? Why should delegates in this Convention, with the sponsors of the bill, get together in secret session and make their arrangements in secret, and then come before this House and say this is the measure we give you because —

The Chairman — Mr. Burkan, the Chair would remind you of the rule that it is unparliamentary practice to arraign a member's motives in his official course.

Mr. Brackett — Mr. Chairman, I raise the point of order that criticizing the policy of parties is not a violation of the rule, that criticizing action that has been taken is not criticism of a delegate's integrity. It is a criticism of the action that is taken, and that is what the different citizens must criticize each other for.

Mr. D. Nicoll — Mr. Chairman, I move that the privileges of the floor be extended to Mr. William F. McCombs, who is the chairman of the Democratic National Committee.

Mr. Tanner — Mr. Chairman, I take great pleasure in seconding that motion.

The Chairman — It is duly moved and seconded that the privileges of the floor be extended to Mr. McCombs. All in favor will say Aye, contrary No. Carried.

Mr. Burkan — It has been attempted to coerce the members of this Convention, at least those on the Democratic side, by that plank in the Democratic platform recommending to the people the principle of the short ballot. The greatest leader in the Democratic party to-day reserves the right, when the necessities

of the occasion require it, when good policy and statesmanship require it, to repudiate and refuse to follow a plank of the Democratic platform. The platform upon which he was elected provided as follows: "We favor the exemption from tolls of American ships engaged in coastwise trade passing through the Panama Canal. We also favor legislation forbidding the use of the Panama Canal by ships owned or controlled by railroad carriers engaged in transportation competitive with the canal." The leader of our party reserved the right and exercised the right to do that, and I say that the Democratic members sitting in this hall have the right if they feel that this plank of the platform does not truly express the views of the Democrats of the State of New York, if it does not reflect the sentiments, the views and desires of the people of the State — they have the right to denounce that plank. Where was that plank conceived? Who was responsible for it? Was it ever submitted to the Democratic voters of the State of New York for ratification? That plank is heresy. It is violative of the fundamental principles of democracy. Jefferson preached against concentration and centralization of power in the hands of one man. Those are principles that are in vogue and in fashion in Russia, but they have no place in American institutions. Such a doctrine is undemocratic. It has no place in a Democratic platform, and I say if you submit the short ballot to the Democrats of the State of New York, if you submit that principle to them, they will spurn, denounce and repudiate it.

Mr. Tanner — Are you aware that the distinguished leader of the Democratic party in the nation has strongly indorsed the short ballot?

Mr. Burkan — I believe he has, but, as our distinguished leader reserved the right to denounce and refused to carry out one of the planks of our platform which he felt was unwise, I reserve the same right to denounce and repudiate and refuse to stand by a plank which I believe is undemocratic, detrimental to the best interests of our people, and which they do not support. But, what was the origin of this plank? Who was responsible for it? A number of men in an unofficial convention got together and submitted a platform. Was it ratified by the delegates of the Democratic voters of the State of New York? Did they have a say in the matter? Was there any real, honest, public demand in the State of New York for the short ballot? If so, you would have had a greater vote for this Convention. Go back to the figures, gentlemen, when the question was put, shall there be a Constitutional Convention? Was there a demand for the short ballot? A number of men got together, most of them disappointed in politics who could not secure preferment in the usual and

ordinary way, through the ordinary channels, formed a little group, engaged a secretary and a good press agent, and started a propaganda. They called themselves some sort of a "Short Ballot Association." They wrote article after article, delivered speech after speech, until they finally frightened the leaders of the parties. The leaders became frightened, and thought there was a real, honest public demand for the short ballot. They pledged themselves to support it in their platforms, and then want to make those who are opposed to it, swallow it.

I have been around since last Saturday; I have talked with the people in my district. I say to you gentlemen that they do not understand the proposition. They read the speech of the gentleman from Saratoga and they say that he expressed their sentiment and views correctly. The people do not understand that the short ballot means taking away their right to select their own officials and to hold them strictly accountable and responsible directly. I ask those Democrats who have been flaunting the platform before us, whether they supported the platform of 1896. I have that platform before me. I refer to the 16-to-1 platform, and I ask how many of those who are to-day speaking in behalf of the short ballot voted to support that plank of the platform. I dare say but few. I call the attention of some of my friends to the real opinion and to the views of the people of the United States concerning the question as to who shall rule, whether bureaucrats, whether a governor with whom shall be centralized and concentrated all the power, or whether the people shall rule. I call the attention of my Democratic friends to this provision of the platform that was adopted during the campaign preceding the last presidential election. The plank is headed "Rule of the People" and reads as follows: "We call attention to the fact that the Democratic party's demand for a return to the rule of the people, expressed in the national platform four years ago, has now become the accepted doctrine of a large majority of the electors. We again remind the country that only by a larger exercise of the reserved power of the people can they protect themselves from the misuse of delegated power and the usurpation of governmental instrumentalities by special interest. For this reason, the National Convention insisted on the overthrow of Cannonism, and the inauguration of a system by which United States Senators could be elected by direct vote. "The Democratic party offers itself to the country as an agency through which the complete overthrow and extirpation of corruption, fraud and machine rule in America can be effected." Now, gentlemen, here is an expression by the delegates of the Democratic party throughout the United States. Did they say in this plank that they want

the short ballot? Did they say they want to reduce and restrict the number of elected officials? No, they said, "Return to the rule of the people." That is the cardinal principle of democracy. That is the principle that I was taught when I cast my first vote, that has been preached by Democratic leader after Democratic leader. I have heard them denounce centralization and concentration of power, but now in this Convention for the first time it is stated that we are committed to a platform, we are committed to a doctrine which the people repudiated in 1846. I hope and trust that the Democratic members on this side of the House will not be coerced by any provision in the Democratic platform of last year. I hope and trust that they will be true to democracy, that they will vote for the retention of the system that we have enjoyed since 1846, which is that we shall choose all State officers who shall be directly responsible to the voters, that they will not vote for the concentration and centralization of power in any one man, so as to make him an autocrat.

Mr. Stanchfield — I would like to ask Mr. Burkan if the chairman of the National Democratic Committee who sits by my side would not be recognized as the party leader among all men who follow a political party?

Mr. Burkan — He would be and should be.

Mr. Stanchfield — Let me say, for the information of the gentleman and all Democrats in this House, that the man who drafted this identical plank of the Democratic platform of 1914, in favor of the short ballot and the devolution of power on the Governor, is Mr. William F. McCombs.

Mr. Burkan — I understand that. But nevertheless, I say that Mr. McCombs is just as much mistaken as the three or four men who at this last unofficial convention drafted that plank. I say it is not binding upon Democrats. I say it does not reflect the views of the people or the sentiment of the Democratic voters throughout the State of New York. Leave it to them. Put it up to them this coming fall and see what happens to your short ballot proposition.

Mr. Stimson — Mr. Chairman, this subject has been so fully and admirably covered by the various gentlemen who have spoken that I intend to take only a very few moments of the time of the Committee to present one or two aspects of the case with which I am familiar. In the first place, it seems to me that the one thing which has been advanced by my friends on the other side of this argument with which I fully agree is that the real question which underlies this proposition, and the essential question, is not the mere matter of shortening the ballot but is a very much more important proposition than that, the proposition of introducing

into this State, in the executive department of this State, a system of government which shall be responsible instead of one which is irresponsible. In that respect, in approaching this subject, the Convention is merely carrying out to its logical conclusion a series of steps in the same direction which it has taken in respect to the other branches of the government. In respect to our Legislature, we have devoted a large part of our time towards an effort and endeavor to introduce into that branch of the government the feeling and power of responsibility. That is the way in which we offer the lesson to our friends in respect to financial legislation. That is the lesson which I read out of our attempt to remove from the Legislature those alien administrative duties which have in the past interfered with the exercise of such a responsible function. Again, that is the reason which I read out of the action of this Convention the other day when the question was brought up of limiting the Legislature in respect to its real responsible function of deciding upon the great future policies of this State with reference to the various classes of citizens within the State. I read in the action of this Convention in refusing to place such a limitation on the Legislature in those respects an indication of its determination to make the Legislature responsible in the future for the determination of those great policies.

Again, in regard to the judicial branch of the government, in the action taken by this Convention in focusing upon the judges of this State to a much greater extent than they have hitherto had the function of administering the practice in our courts, I read again the effort of this Convention to make that branch of government responsible to that greater extent for the conduct of the practice of our courts. And again in that other great matter which was disposed of last week, the question of home rule, I read a correlative result of this same principle in our attempt to make the localities responsible for the conduct of their own affairs, and in that way, by the enforcement of a great school in public education, to fit those same citizens for the exercise of responsible government elsewhere; and so, when we approach this subject we have simply reached the application of this same principle to the executive branch of the government of the State of New York, and as I read the principle which underlies this bill, it is simply to carry out into that branch of our government the personal responsibility which underlies all effective action, whether in or out of public life. In the argument there has seemed to me to have developed one clear line of division. My good friend from Saratoga stands clearly on one side of that and I confess that I stand clearly on the other. On his side is the fear that in endeavoring to impose responsibility you may suffer from abuses

of the power that it is necessary to grant in order to get responsibility. On my side, I fear far more the abuses which necessarily arise from irresponsible government than I do what I regard as the largely imaginary abuses which come from an increase of the effectiveness and power of government. I want to briefly call your attention to two of those dangers, it seems to me the history of irresponsible State government has too largely brought out in the history of the past. There has been a great deal of talk here, a great deal of eloquent argument about the danger to the citizen from an efficient autocracy. Mr. Chairman, have you considered the actual dangers which have arisen in the past from an unofficial autocracy? Whether in or out of public life? Let me suggest a moment's consideration of the phase of it which has arisen outside of public life. During the past century in the many and great changes which have occurred in this country in the development of its civilization, we have developed outside of our State government, in our business examples of unofficial power in the shape of our great incorporated business against which certainly there cannot be laid the crime that they are inefficient or irresponsible within their spheres. Mr. Chairman, have you considered how recent a growth that growth has been? A hundred years ago when the United States was all of it in that happy Arcadian condition which now exists only in the county of Saratoga, there was no danger to government arising from the power of unofficial business. When Mr. Jefferson wrote to Archibald Stewart that he had much rather run the danger of too much liberty from executive power than too great an exercise of that power he was unable to foresee that out of too much liberty from executive control could arise an unofficial power in the State which in size, in power, in ability to oppress the single citizen, would far exceed the power of the State itself, and yet that is just what has happened. That is just what happened, and when that great unofficial power has come into contact in the past with the weak, the few and inefficient official power of the State, the inevitable result has happened. The law that the higher organism shall control, corrupt or destroy the lower has followed. How many of our friends here who fear the danger of official tyranny have remembered the unofficial tyranny and the dangers which during the past two decades have beset the private citizen?

How many remember that it is to the development of the executive power alone that the citizen has to look for protection against that unofficial power? Mr. Chairman, when I was holding the office of district attorney under the Federal government, it seemed to me that hardly a week passed but what some one came in to seek the protection of the Federal government in matters which

lay purely within State domain, and that they came because the State had failed to do a duty of protection to the citizen which it primarily owed to that citizen. Look at the history of what we call the growth of Federal usurpation. Has it come from any other reason than that the State and the State's executives have failed in their duty in guarding and protecting the rights of the individual citizen? Mr. Chairman, it seems to me that the very doctrine of State rights for which we all stand, and the importance of which we all recognize, must be postulated first and foremost upon a more efficient performance of State duties than the State has exercised in the past. Now, that was one of the dangers to which it has seemed to me was directly attributable towards the weakness, the division of power of the State government, a division which permitted these great recent growths in the State to exercise a power, unregulated by the State which should control them. The other danger which it seemed to me we have not had sufficiently called to our attention is the danger which might come, which did come, which has come, from inside, from politics itself. The very fact that we have been unwilling to grant to our responsible public official the power to carry into effect the promises of the party platforms on which they were elected has made it necessary, in order that the whole machinery of government should not break down — has made it necessary that there should grow up outside of public official responsibility that invisible government, that system of extra official responsibility, about which we hear so much. Gentlemen talk here of the dangers of patronage, arising out of a system of official responsibility. I say to them that the patronage — the evils of patronage which we have suffered from in the past have come primarily from the fact that we had an irresponsible government, and that the only way in which that government could be made to run was by building up with the cement of patronage a party system which could run it, instead of the accredited official officers. So, Mr. Chairman, it seems to me that the line which we are striving to attain in the report of this Committee is a clear and a definite and a simple one. As Mr. Nicoll has so eloquently pointed out, in a body of this kind, representing all the elements of a State, as diversified as this State, representing all the varieties of opinions which obtain in that State, particularly in a matter of constitutional reform, where no step should be taken until it clearly is a step recognized by the experience of the people to be correct — in such a body it is impossible that we should at one bound or in one step reach the goal towards which we are tending, even though that goal may be clearly in sight. But this proposition of this Committee seems to me to be a very long step in that direction.

It does not go as far as I wish it had gone. It does not go as far as I believe we shall ultimately go in this State if we are to attain an effective and responsible government. But it represents the views of a Committee, careful, honest, earnest in its efforts to arrive at a common conclusion, and it takes a step so incomparable with the situation in which we are now, that I most earnestly hope it will be adopted and that no disappointment that we did not go further may be allowed to obscure the merits of going as far as we have. There has been a great deal stated in respect to the Committee's recommendation in regard to the finance departments in this proposition, and, in view of the experience which I have had this summer in connection with financial matters, I have been asked by the Committee to speak on its behalf in respect to that matter.

Mr. Brackett — Mr. Chairman, will the speaker permit a question? I want to interrupt you at this point. Is the delegate in favor of an appointive judiciary?

Mr. Stimson — Does the delegate think that question is germane to what I am arguing now?

Mr. Brackett — Was that what you meant when you said this did not go far enough?

Mr. Stimson — I was not talking about this executive position contained in this proposition of the Committee on Governor and Other State Officers.

Mr. Brackett — I want to get your opinion, what you meant by that statement.

Mr. Stimson — The gentleman has asked me quite apart from anything in this matter whether I was in favor of an appointive judiciary. I have served during the better part of my practice under an appointive judiciary, the Federal judiciary of this nation, and, on the basis of my experience with the judiciary, my respect for its independence, its integrity, its honor and its intelligence, I have not the slightest fear or hesitation in saying that it, to my mind, represents the ideal judiciary.

Mr. Brackett — Will the delegate yield to one more question?

Mr. Stimson — Not unless it is on a matter I am debating. I have answered that one question, and I would prefer —

Mr. Brackett — I think this one is; I hope it is. Do you really and truly think that the Court of Claims, an appointive court, has been better in its personnel and more learned in its knowledge than that of the Court of Appeals, an elective court?

Mr. Stimson — Senator, in answer to that question, I think that every member of this body would say that is not a proper or a fair comparison between two courts of equal jurisdiction or of equal position. Now, I would rather not answer any other ques-

tion until I get through. I was proceeding with the portion of this bill which relates to the departments, relating to the revenues and the finances of the State. Now, the examination which anyone may make of the financial system of the State will reveal, I think, one great error at the present time existing in our financial system and that has been that the chief financial department of the State, the Comproller's office has been subject to no independent audit whatever. The Comptroller has been not only the chief financial auditor of the State, in that upon his warrant alone the moneys of the State are paid out through the treasury, but he has been also the one officer vested with the power to examine and audit, pass upon and criticise the other departments of the State. It is a curious situation. The one man who had in his hands most of the fiscal functions of the State, had the one department into which no one from the outside, no regular department had the right regularly to go; and in its study of that matter the Committee regarded that as the main defect to be remedied. Now, the first proposition covered in this original bill was to separate those functions in a way that would leave the financial functions in the hands of an appointive officer and to make the critical functions and examination of audit vested in an elective officer, with an attempt to attain a system somewhat like that which Senator Wagner pointed out, which is in effect in Great Britain; somewhat like that which is in effect in the Federal government. I personally think that that is the system which is in most accord with sound financial principles. I think I was one of those who argued most strenuously for the adoption of that system by the committee, and it was adopted in our first bill; but when that bill was put out, and the Committee was able to receive the criticism which came to it from all portions of the State, several facts developed which materially affected and changed the situation and the judgment of the Committee. In the first place, as we all recognize, a Constitution is not a piece of paper alone, it is not a theoretical system, but it is, even in those States where written Constitutions obtain, it is a system of custom, usages and habits affecting, in this State, nine millions of people; and it at once developed that the people of this State had grown used to a system like the former office of the Comptroller here, not only in the State but in all of those cities. In none of those places was there anything which corresponded to the proposition which we thought was the better of the two. In the great city of New York, for instance, and in all our second class cities, the financial affairs of the city are in the hands of a Comptroller, like the State Comptroller. There is a separate officer called the treasurer, in the second class cities of the State, and in the city of New York, a

chamberlain, and they supply their independent audit through what is called a commissioner of accounts. The Comptroller is kept an independent officer in all of those cases, just as in the State, elected at the same time as the mayor, just as the State Comptroller is elected with the Governor, and the scrutiny and criticism which is wholly lacking in the State is supplied by giving to the mayor a commissioner of accounts who can perform that absolutely necessary function for him.

Mr. Quigg — Mr. Chairman, I wonder if the gentleman would yield to me for a question. I promise that it will be very germane.

Mr. Stimson — I will; but I would rather not yield again.

Mr. Quigg — I shall not ask it again. Could not the very scheme of the Committee be restored to it by some such plan as Senator Wagner and Mr. Nicoll have suggested, of having an auditing officer elected by the Legislature?

Mr. Stimson — I am going to come to that, but I will answer it in its regular course. In my opinion it cannot. But I will argue it in its regular course. It comes a little bit later.

Now, the upshot of this situation was that the Committee had brought to it very clear evidence that this system of a comptroller instead of a treasurer, independently elected by the people, instead of being appointed by the Governor, had produced that sentiment of reliance upon a going concern which had in the past successfully and adequately conducted the fiscal affairs of the State which they were very unwilling to have changed. I have here before me, for example, a financial history of the State of New York published only a year or two ago which summarizes this attitude of the people towards their comptroller. This historian says — and it is the most recent and the most thorough treatment of the subject that I have been able to find: "The comptrollers of the State have been for the most part men of unusual ability and their reports are teeming with suggestions for improvements which have too often passed unheeded by the Legislature. Time and again the comptrollers have pointed out improvements which if they had been acted upon would have saved the State thousands of dollars and in nearly every case would have been for the best interest of the people. In some cases the same suggestions have been repeated year after year by successive comptrollers. Comptroller Flagg, who held office continuously from 1832 to 1842, with the exception of one term, was one of the great comptrollers of the State. He pleaded in vain against using the capital of the general fund for defraying current expenses, and again and again pointed out the necessity of imposing a tax for meeting expenses. His masterly criticism of the famous Ruggles plan for

incurring a debt of forty million dollars for canal improvement, which has been fully described elsewhere, was one of the great financial documents of the State. Comptroller Roberts' reports of the nineties, dealing with the breakdown of the old general property tax and arguing for the newer forms of special and indirect taxes, and especially the graduated income tax, and the separation of State and local revenues, are noteworthy documents," and so on; and I might add that one of the evidences of this feeling which came to the Committee was a protest from ex-Comptroller Roberts himself, pointing out the disappointment in the minds of the people with the working of that system and the danger of doing anything which might be interpreted as a disturbance of the functions of the office which had grown into the confidence of the people. The Committee was also confronted with the fact that the experience of the State with its governors of recent years had not been so satisfactory as with its comptrollers and there was a great danger that a proposition which proposed to transfer a part of the power which had formerly been independently exercised by the Comptroller would produce an accentuation of this same distrust and criticism which Mr. Tanner pointed out. And, as another evidence, the other day, the letter which was received from Senator Wadsworth pointing out the same fact, as representing his wide opportunity for examination of this question and the sentiment of the people of the State in regard to it, and which was, as you all know, a letter coming from a man who has been one of the pioneers of the policy of responsible government, and who was absolutely in sympathy with it. And then there came from the office of the Comptroller itself strong protest against action which would, in fact, as they claim, destroy the efficiency of this growing concern.

Now, I have listened to many of the suggestions and criticisms that have been made of those who favor this proposition. I simply have to say in regard to that that I must approach it in the cold, gray light of the facts as I have seen them. I know nothing of any causes for any disappointment at the proposal of the delegates of Brooklyn to live up to their ante-election promises. I have always felt that that was the thing they should do and would do. I know nothing about any ulterior motive on the part of the Comptroller's office, but I do know this, and I wish to say most emphatically, that I have been in a position this summer whereby the action of our Committee, the Finance Committee, by one stroke we stripped away from the office of the Comptroller patronage amounting to $62,000,000, when we provided that the $27,000,000 canal bonds that are to be voted this year, and the $35,000,000 highway bonds which are still to be issued, should

not be sinking fund bonds, but should be serial bonds, and not a single protest came to us from that office. There in one stroke we proposed taking away from that office the investment of sinking funds annually which gave to that office the most tremendous power of patronage, the absolute selection of where the investment should go among all the cities, towns, villages and various civil subdivisions of the State. We went night after night to the Comptroller's office and discussed it with him and his subordinates, and I can say from my own personal experience that in that office we argued the question and argued it on its merits, and that they were in favor of the proposition and loyally supported everything that we did. And so when those same men, men like Mr. Wendell, Mr. Lee and Mr. Schaible, and the other men who have made the record of that office in the past, came to us and told us that they thought this new proposal by the Committee on Governor and Other State Officers would seriously interfere with the efficiency and ability, and with the common respect of the people in an office which had commanded that respect in the past, they were met with the respect and good will which their attitude on this other question had, in our opinion, entitled them to. Then we found that delegates here representing this same spirit in the State, represented it so strongly that an amendment had been drawn which had embodied this very change itself, and which evidently had the support of a very widespread feeling among the members of this body. It was these considerations, Mr. Chairman, so far as I saw them, and I believe I saw them as clearly and fully as any member of the committee, which brought me to the conclusion, and I think brought the other members of the committee to the conclusion, that the people of the State would be better satisfied with a continuance of their fiscal affairs under the system to which they had grown accustomed rather than the system which was proposed by the committee, and that a persistence in the other plan would engender a feeling of dangerous distrust in regard to financial matters, which is one of the most dangerous distrusts which can be aroused. But in making the change which the new plan proposes, which contemplates a continuance of the Comptroller system, instead of the system of the Secretary of State or Secretary of the Treasury which had been formerly proposed, the committee has added the lacking function which will supply the remedy or cure, and which brought us first to the consideration of the whole question by an addition of a department of accounts under a commissioner of accounts. We have provided for the necessary visitation, inspection, examination and verification of the Comptroller's office which has been heretofore entirely lacking.

Now, Mr. Quigg has asked me why that officer should not be elected. I answer that, in adopting the new system we have transferred ourselves entirely from the old proposition — we have transferred ourselves to an entirely new system, and we must examine it in the light of all of its ramifications with reference to the old. Under the old system the Governor would have had the financial offices. He would have been his appointee. He would have been able, therefore, to know what there was going on in a financial way in this State, and it was quite proper that the audit, the inspection and the verification come from some one outside of the Governor's sphere of influence. But now we have suggested the creation or the continuation of a system where that financial officer himself was independent of the Governor, and where, unless the Governor is given some means of acquiring the information that he would have had otherwise by his power of appointment, there will be a gap, an hiatus between the Governor and that information, which may be a detriment to the best interests of the State. I have in mind particularly the creation of the budget. At the time when we were discussing the budget the old plan was in our minds. I think the existence of a constitutional officer who could familiarize the Governor by his own examination, just as the mayors' commissioners of accounts will familiarize in our cities the mayors of what goes on in the comptroller's office, is an almost essential instrument for the adequate working of the budget system. Mr. Tanner to-day has added in the way of a suggested amendment a proposal which I think meets adequately Mr. Wagner's suggestion and which will give the Legislature all of the power and ability to acquire information which was aimed at by Senator Wagner. That provides, under the language of the amendment, that there shall be added also the duty upon this officer to make any special examination and report which may be required from time to time by a resolution of either House of the Legislature. In other words, that makes this officer, so far as the Legislature desires to avail himself of him, the finger, the hand of the Legislature, and enables the Legislature to itself acquire, without the possibility of being pigeon-holed, any information which is within the possession of the Commissioner of Accounts. But, bear in mind that, while the Legislature has the power to get that as one of the inherent powers of its organization, if you make this commissioner wholly independent of the Governor, the Governor would have no such power, and I believe that the only way, certainly the surest and safest way, to achieve what we are all endeavoring to get is by following the line which has already been blazed out in the history of our cities, which this Proposed Amendment very closely follows.

Now, I think I have covered the important questions arising in the Finance Department. It was suggested the other day that the Treasurer was an unnecessary officer. I think that is open to very serious argument. The most important argument which has come to me in favor of this bill in favor of a separate Treasurer, came to me from the Comptroller's office itself. Now, the Comptroller, who would gain by abolishing a separate Treasurer, because the Legislature could hardly put these functions anywhere else except in the Comptroller's office, when it came to classify them next year,— but the men in the Comptroller's office themselves told me that only last week that they considered the absence of a separate treasurer with their knowledge of the functions which ought to be played by the two officers as a great defect in our former bill, and that it was against the interests of their own offices, and strongly argued that such an office should be created in the new bill. Now, their experience in that matter is far greater than mine, and I confess that I have been very largely influenced by it.

Mr. Quigg — Is there any reason why the Comptroller and the Treasurer and the Auditing Officer should all have seats in the Assembly and in the Senate during the argument on a budget? It is germane, it is germane to this point, because you have brought them all in here.

Mr. Stimson — I see every reason, Mr. Chairman, why every officer who holds any financial relation to the conduct of the State's affairs should be subject to the duty of and be vested with the power which has been given by the action of this convention already to such officers. I differ a little from Mr. Quigg in saying that they be given a seat. They have not, by a necessary corollary of what this Convention has done, but I firmly believe that they should be subject to call and to examination by either House of the Legislature and that they should have the right to say what they want to say in regard to the budget. Gentlemen, that is all I have to say in respect to this matter.

Mr. J. S. Phillips — Would it not be possible for the Secretary of Treasury to also perform the duties of Commissioner of Accounts and thus save one department?

Mr. Stimson — I don't think so, Mr. Phillips. It seems to me that the functions are so different that they are two officers which ought to be kept apart. What I mean is this: The Treasurer, as Treasurer, will be, to some extent, the co-worker of the Comptroller. If he is anything like the present Treasurer he will become in some respects his cashier. I don't believe you will make an effective Bank Examiner out of a cashier. I don't believe if you are going to try to make an effective Bank Examiner, you are going to take out the paying teller —

Mr. Wadsworth — But you make him an important officer by the Constitution, by imposing certain duties upon him.

Mr. Stimson — I don't think you can by the Constitution make any officer effective or ineffective, if you are on the wrong line for doing it.

Mr. A. E. Smith — Question No. 1: In the original report of the Committee on the Governor and Other State Officers, there was merged together the Department of Taxation and Finance. That report said that under the proposed plan, the department would be devoted to the collection and care of public revenues, intended to be the financial arm of the State government, to whom the Governor must look as his advisers in matters of finance. I would like to ask why the change was made separating that department, the Treasurer and the Tax Commissioner left separately, provision made for the Treasurer with apparently no duties for him?

Mr. Stimson — I will answer that question this way, Mr. Smith: There was a very strong argument made before the Committee by several members to the effect that the function of assessment should be separated from the function of collection of revenue, so far as possible. It was an argument which had great weight with the Committee in making its original report, and came very near being adopted. At the time we decided that the Treasurer should then be appointive, it was overruled at that time, because it was felt that there was no particular danger of an appointive officer going on and increasing or abusing the powers which would be otherwise divided between bureaus. When he was made elective, we returned to the elective system, the Committee felt that it was wiser in order to prevent a possible accumulation of duties on a man who might be tempted to build up an elective office to a higher and higher and bigger and bigger scope, it should be introduced as a check against the growth of that office beyond what it is now.

Mr. A. E. Smith — Will the gentleman yield for a question? Would there be any objection to transferring to the new treasurer the entire business of the collection of all taxes in order to justify his existence in the Constitution, which apparently has none?

Mr. Stimson — You mean by that, Mr. Smith, to combine the functions of Sections 6 and 7?

Mr. A. E. Smith — I mean by that to take from the comptroller all the powers except the powers that belong with the comptroller to audit the accounts of the State.

Mr. Stimson — What you have just stated would be a reversal of the plan back to the difficulties and the evils, the lack of public confidence which caused the change from the first bill.

Mr. A. E. Smith — Well, the gentleman who explained the change from the first bill dwelt only on the assessment. That answered the question why the treasurer was separated from taxation, but I did not hear why the power was returned to the comptroller of collecting taxes.

Mr. Stimson — The gentleman misunderstands me. It answers the question why it was separated from the comptroller. The treasurer has no power of collecting taxes, and therefore a separation of this function from the treasurer does not effectuate that separation. It is a separation of the Department of Taxation from the Finance Department, the comptroller, that gives opportunity to the Legislature to separate, to keep separate what it has now already separated, and to separate more in the future if it is advisable between those two functions. The gentleman knows that the collection of taxes is now in the hands of the comptroller.

Mr. A. E. Smith — Would the gentleman yield to one further question? What possible objection can there be to giving some duties to the treasurer if we insist upon creating him? We create him in this amendment, and he stands alone by himself as treasurer, and apparently he has nothing to do except to be treasurer.

Mr. Stimson — He has the rather important function of the custody of the funds of the State.

Mr. A. E. Smith — Well, that is a question of opinion, as to how important that is. I think we all agree that it does not amount to anything, because in the first draft of the bill you wiped him out.

Mr. Stimson — I will agree with the gentleman that the function of treasurer in the past has been a minor one. He has had charge of the funds and I have given the reasons which led me and I think led my brothers on the Committee to separate him; but while I think that the separation of the treasurer from the comptroller is of rather minor importance, I do think that the separation of the department of taxation from the comptroller is of much more importance.

Mr. A. E. Smith — One final question, and I will have finished: The Republican State platform, adopted in 1914, reads as follows: "To prevent the multiplication of officers, we recommend that the various administrative functions of the State, so far as practicable, be vested in a limited number of departments." I desire to ask the gentleman if in view of the fact that this proposal adds to the number of State departments, he believes that, as far as that declaration is concerned, it is in conformity with the platform?

Mr. Stimson — My answer to the gentleman is this, that in-

stead of adding to the number of departments reduces that number from 152 to 17.

Mr. A. E. Smith — Mr. Chairman, to say the least about that, it is absurd to make that statement. It does not do anything of the kind. We may be relying upon the Legislature of 1916 carrying out that platform plank, but if they don't make a better job of it than you have in your Constitution, there will be 152 or so departments, because you have added departments of State right in the Constitution itself.

Mr. Stimson — I have yielded, I think, to my friend's question. I will simply say in answer to that, that it was the action of the Legislature in the past, in permitting these different bodies and officers to swell and grow to the number which has been pointed out many times in the last three days that made necessary some such classification, and that the provisions of Section 2 of this article make it the absolute duty of the Legislature to include and classify all of those 152 boards, commissions, and offices into some one or other of these seventeen departments, and that I, for one, believe that the Legislature will not decline to perform that constitutional duty thus imposed upon it.

Mr. Wickersham — In order that the next speaker may not be interrupted in the middle of his speech by the recess hour, I move that the committee do now rise, report progress and ask leave to sit again, with the intention of then proposing that we recess until two o'clock, instead of two-thirty.

The Chairman — You have heard the motion that the committee do now rise and report progress. All in favor will say Aye, contrary No. Carried. (The President resumes the Chair).

The President — The Convention will come to order.

Mr. M. Saxe — The Committee of the Whole, having had under consideration general order No. 59 report progress thereon and ask leave to sit again.

The President — All in favor of granting leave will say Aye, contrary No. The leave is granted.

Mr. Wickersham — Mr. President, I move that the Convention do now take a recess until 2 o'clock, instead of two-thirty, and proceed at that time with the special order under consideration, and that the time fixed after which speeches shall be limited to ten minutes each be extended to three-thirty o'clock.

The President — All in favor of the motion will say Aye, contrary No. The motion is agreed to.

Mr. Schurman — As was explained by Mr. Low, I was detained this morning and could not arrive in the Convention until eleven o'clock. I found on my table at that time a telegram from Delegate Whipple asking me to state that he was detained by an engagement in Boston. I ask that that be noted on the record.

The President — The Convention stands in recess until two o'clock this afternoon. Whereupon, at 1:00 p. m. the Convention took a recess until 2:00 p. m. of the same day.

AFTER RECESS — 2 P. M.

The President — The Convention will come to order.

Mr. Wickersham — Mr. President, I suggest the absence of a quorum and that the roll be called.

The President — The Secretary will call the roll.

Upon the call of the roll the following delegates responded:

Mr. Adams, Aiken, Allen, F. C., Angell, Austin, Baldwin, Bannister, Barnes, Barrett, Baumes, Bayes, Beach, Bell, Bernstein, Berri, Betts, Blauvelt, Bockes, Brackett, Bunce, Burkan, Buxbaum, Byrne, Clearwater, Clinton, Cobb, Coles, Curran, Dahm, Daly, Dennis, Deyo, Dick, Donnelly, Doughty, Dow, Drummond, Dunlap, Dunmore, Dykman, Eisner, Eppig, Fancher, Fobes, Foley, Ford, Franchot, Frank, Gladding, Green, Greff, Griffin, Haffen, Hale, Heaton, Hinman, Jones, Kirby, Landreth, Latson, Law, Leggett, Lincoln, Linde, Lindsay, Low, McKean, McKinney, Manderville, Martin, F., Martin, L. M., Marshall, Mathewson, Mealy, Meigs, Mereness, Nicoll, C., Nicoll, D., Nixon, O'Brian, J. L., O'Brien, M. J., O'Connor, Olcott, Ostrander, Parker, Parmenter, Parsons, Pelletreau, Phillips, J. S., Phillips, S. K., Quigg, Reeves, Rhees, Richards, Rodenbeck, Rosch, Ryder, Sanders, Sargent, Saxe, J. G., Saxe, M., Schoonhut, Schurman, Sears, Sharpe, Sheehan, Shipman, Slevin, Smith, A. E., Smith, E. N., Smith, R. B., Smith, T. F., Stanchfield, Standart, Steinbrink, Stimson, Stowell, Tanner, Tierney, Tuck, Unger, Vanderlyn, Van Ness, Wadsworth, Wagner, Ward, Waterman, Webber, C. A., Weed, Westwood, Wheeler, White, C. J., Wickersham, Wiggins, Winslow, Wood, Young, C. H., Young, F. L., Mr. President.

Mr. Parmenter — Mr. President, I have a telegram from Delegate Johnson, who says that he is unavoidably detained and asks to be excused for the sessions this morning and this afternoon.

The President — One hundred and fourteen delegates having answered to their names, a quorum is present. All in favor of granting the excuse just asked on behalf of Delegate Johnson will say Aye, contrary No. The excuse is granted. The Convention will return to Committee of the Whole for consideration of the pending special order. Mr. Martin Saxe will resume the chair.

The Chairman — The Committee will come to order.

Mr. Wiggins — Mr. Chairman, the consensus of opinion with relation to this measure which has been proposed by Mr. Tanner's Committee seems to be that it is a very meritorious measure. From the knowledge of such government which I have, I am also impressed with the fact that it is, and that that consensus of opinion is correct. I know the Committee spent a good deal of time and labored very seriously and studiously with the many problems which have been presented to it. If it serves the purpose which they say it will, of reducing expenses and saving money, and reducing taxation to the people of this State, and if it should be approved at the polls, I know that it will reflect great credit upon that Committee. There are some details of the bill to which I have some objection, but those, in due course of time, when the different sections are considered, will be taken up. The two principal ones which I have in mind at this time are those which refer to the Secretary of Charities, which strikes me as being wholly unnecessary, and a further and additional burden upon the State, and diametrically opposed to the theory upon which this bill was drafted. The other is that pertaining to the subject of the Commissioner of Public Works. I think if they put a layman at the head of that, you might just as well put a business man at the head of the Department of Justice. If the lawyers of this Convention had the suggestion made to them that a business man should head the legal department of the State, there would be a revolt that would be heard all over the State of New York. I am not particularly concerned with those features of the question at this time. What I am more concerned about is the subject of whether we shall go over entirely to the appointive system, or continue under the elective system. When I came up here I knew very few, if any, of the men except those who live around my own county. After we had been here a little while, we farmers, knowing each other by the trousers bagging at the knee and the Congress shoes we wear, used to gather up here in the back of the hall. Afterwards we followed the country practice of going down to the tavern at night, sitting around, smoking cigars and talking a little, and after a time we began to think that perhaps we were members of this Convention, and, timidly, once in a while, we referred to the Constitution. Then some one began to talk about the so-called short ballot, and there seemed to be a great sentiment against it. But, now, like the Arabs, they have folded their tents in the night time and silently stolen away. When I first heard about it, I began to look up about this so-called short ballot. I did not have any particular notions about

it, no views on the subject, but I began to read the mass of literature that was poured in upon us, and I wanted to become convinced one way or the other, if I could. Of course, the only particular thing for me to do was to look back on the constitutional history of the State and, when I did, I found that while the Short Ballot Association says that this is only six years old, instead of that we had it one hundred and forty years ago or more. What do we find? I found that the first Constitution in this State was adopted in 1777, down at the home of my dear friend, Judge Clearwater. That was not even submitted to the people. Down there the influential men of the time got together and fixed up a real simon-pure short ballot, such as we have not got now, such as is not proposed in this bill. They provided in the Constitution that there should be a Governor and Lieutenant-Governor, and then that there should be a select council of a Senator from each district and the Governor to select all the other State officers. Now, that was a pretty good simon-pure document, when it comes down to the short ballot. Of course that became the Constitution of the State without adoption by the people, by action of these self-constituted framers, and continued until 1821.

I find, in referring to the history of the State at that time, that it was generally conceded that that Constitution was passed upon the theory that the people were not entitled to self-government, except in a very small particular, because the Governor continued, or, rather, did appoint all the judicial officers of the State. His hand reached out into every community; officials to discharge all the duties were appointed by him. Now, in 1821, they had another Constitution, I find, and then they changed the rule just slightly. They gave a little more self-government to the people; they let them elect the Governor and the Lieutenant-Governor, and provided that the Legislature should appoint all these various State officers. I think they also at that time gave them the right to elect justices of the peace, sheriffs and county clerks; but I think, if I recall correctly, that the district attorneys and other officers were still selected by the Board. That continued down until 1846. The Constitution which was adopted in that year was the most radical departure that we have had, either before or since, because there the whole system was changed, and we abandoned the appointive system, and embraced the elective system which is now in force in this State. The principal State officers, like the Governor and Lieutenant-Governor, were to be elected b ythe people. No change has been made in that since. In 1867 we had a Constitutional Convention, but that convention only provided that the judiciary — no, that provided

that the judiciary should continue to be elected and that was the only provision of it that passed. The subject was next treated, as Mr. Nicoll, of course, knows, in the Convention of 1894, when two or three amendments were offered for the purpose of returning to the appointive system. They received scant attention from the Convention. Several were offered for the purpose of expanding the elective system, and having more elective officials. There was considerable debate and discussion on that subject, but that was finally beaten. Now, I am told that we have got to abandon these theories which have been in force in this State since 1846 and go back to the appointive system because somebody drew up a platform.

Mr. Parsons — Did I understand the gentleman to say that there had been no change in the elective system since 1846?

Mr. Wiggins — I think they cut off two or three officers. There was a canal commission, or something of that kind, that was changed, but the elective system has continued from 1846 to the present time, with the exception, possibly, of one or two officials. If you have got them, I would be glad to have you give them to me.

Mr. Parsons — Under the Constitution of 1846, they elected three canal commissioners and three inspectors of prisons. The Convention of 1867 recommended a change, and in 1876 the people approved the change and struck out the three inspectors of prisons and substituted an appointive superintendent of prisons. They also struck out the three canal commissioners and approved of the appointment of a superintendent of public works, by a vote of six and a half to one. Perhaps the gentleman would like to know what the vote in his own county was in favor of shortening the ballot.

Mr. Wiggins — We are very progressive down there, from the standpoint of a New York man.

Mr. Parsons — I will give the gentleman the vote in his own county, first, on changing from the election of three canal commissioners to the appointment of a superintendent of public works. Those in favor in Orange county were 12,743; those opposed, 198. On the appointment of a superintendent of prisons, those in favor were, 12,742; those opposed, 197.

Mr. Wiggins — Since then we have changed, Mr. Parsons. We have found, to our regret, that the government of this State can be run better by elected officials than by appointed officials, and we are now advocating a return to that system.

Mr. Parsons — Is not the gentleman familiar enough with the history of the State to know that it was dissatisfaction with elected officials which led to that revolution, so marked in his own county?

Mr. Wiggins — I know the reason that led to the return of elective officials was corruption and if you will permit me I will be glad to read to you that it was. They had a convention in 1867 and 1846, as you and I have been just discussing. The convention of 1846 was not reported by stenographic notes but the old desire that then existed to retain the appointive system was renewed in 1867, and there it was reported stenographically and I will read for your benefit. Discussion by Mr. Fuller: "Under the former Constitution of this State, adopted in 1821, the State officers were appointed by the joint nomination of the Senate and Assembly. But great abuses grew up under that system. Under it we had the installation of the Albany regency with all its abuses. Although those abuses have measurably passed out of the memories of the people, they are not yet entirely forgotten, and there is a strong disinclination to revive them, either in whole or in part. In consequence of those abuses the framers of the Constitution of 1846 had resort to the elective system. They provided for the election of all these State officers by the people. And, sir, I think gentlemen will hardly stand up on the floor of this Convention and argue that the people are not fit to be intrusted with this duty, or that they are incompetent to discharge it."

Mr. Parsons — Is not the gentleman familiar with the corruption that existed under the old elective canal commissioners?

Mr. Wiggins — No, I was born after that time.

Mr. Parsons — But I supposed you had continued your study of the affairs of the State down to this time. I suppose you had not skipped any.

Mr. Wiggins — The old canal commissioners were vested in the elective officials. It was thought by turning the canal over to the canal board —

Mr. Parsons — No, the functions were transferred to the superintendent of public works — an appointive officer.

Mr. Wiggins — I know that it was not any worse than that which occurred under the superintendent of public works in '96 and possibly '97, with which you must be familiar.

Mr. Parsons — The gentleman does not seem to be familiar with the corruption that existed back in 1867. You have not read those reports because there was constant corruption under the old canal commissioners, greater than any that has occurred since.

Mr. Stimson — What were you talking about, Mr. Parsons, the nine million dollar steal?

Mr. Parsons — No, the corruption under the elective Canal Commissioners back in the sixties.

Mr. Wiggins — What I have in mind is a little more recent,

in '96 and '97 which comes under the appointive head. They tell us we must go back to this appointive system because we have a platform and we are obligated to the platform. Well, we Republications had an unofficial Convention. We had no standing in law, and we went up there. There was no interest taken in the Convention, if the county of Orange can be any criterion. In the ward where I live, I attended the conference which they called to select delegates to send down to the State Assembly Convention, and I think we had six or eight people out. When the State Assembly Convention was held there were not enough people there to eat the chicken dinner which had been prepared for the delegates. Nobody took any interest in it. I see now why they did not. Mr. Tanner confirms it very well. He said the other day in speaking, I am only going to read from one platform and that is the Republican platform which was adopted last fall. Now that was held in the latter part of August, and we Republicans, to be sure that we would get a safe, sane and responsible platform appointed a Drafting Committee in May. There was no use of us Republicans going up to Saratoga if we had a Platform Committee in May and if we were simply called together to put the stamp of approval upon the platform. Let us see what it did — to repeat perhaps for the benefit of those who were not there. Here is what it said: "Delegates to the State Constitutional Convention should be at liberty to approach every constitutional question with an open mind and to vote thereon as their individual judgment and conscience may dictate so far as for the best and permanent interest of the people of the State. This Convention disclaims the right or desire to embarrass the freedom of action which should belong to every delegate." Now I say platforms have no part in the Constitutional Convention, but if they had, that leaves us free to act as our conscience dictates. Now I would like very much indeed to get up ahead with this Short Ballot Association, I would like to hear the music play, rather than to whistle to the marching in the rear, and I would like to have the smile of Mr. Tanner and Mr. Stimson, and the rest of the gentlemen, but to do that I have got to surrender the principle I believe, that is, that there should be an elective system of officials in this State. It is the old cry, the revival of the old struggle of the masses against the classes, over and over again that comes up every year, every time we get together for the purpose of changing the organic law of the State. That is the one cry that is brought out. That was, as I read to Mr. Parsons, discussed at the time of the 1867 Convention and there is just another word from that that I would like to read to you gentlemen. In discussing that cry which was made at that

time Mr. Townsend in speaking on the subject said: "What has produced this change? Have our friends got sick of Republican government? Must we imitate foreign governments and so far as possible to carry our imitation that there should be one executive head, and that that executive should concentrate in himself all power? Shall there be but one officer, one man, one mind, one will? The gentlemen have entirely mistaken the character of our government and of our institutions. We enjoy the prosperity we do enjoy in our country because we believe there are many valuable minds amongst men, that the opinions of all sorts of men ought to be concentrated in the administration of the government. In this we have a great advantage over those governments of the old world where everything is concentrated under one executive head, and where but one mind is supposed to control the State. For myself, I wish to say that although I have gray hairs externally, like the gentleman from Westchester (Mr. Greeley), who had told us he has got to be an old man, I am not getting to be an old man internally, I have not got sick of republican government, and I hope to Heaven this Convention is not sick of republican government. If they are sick of republican government, they will find the people of this State are not, I say to gentlemen now, who by their scheming are trying to thwart the powers of the people of this State, in contriving a plan to prevent their influence in the government of this State, that they will be mistaken in the end if they put provisions in this constitution that shall essentially change the character of the government. The people of this State have not got the dyspepsia. "Now the people of this State have not asked us to take away their powers. There was no audible groan through the halls of the State of New York, from the people of the State, sighing that they were weary of the exercise of the power of electing their own officers." And what is true then gentlemen, I believe to be true now, and reference to this history of this State will show it. In 1867, it was provided that in the year 1872 there should be submitted to the people the question, "Shall there be an appointive judiciary," and the answer came back very strongly, "No"; and then a short time ago we decided the people should have more power, more control in local self-government, and we enacted the direct primary system, now we take another step forward, and just a short time ago what did we do? There was a great demand for the election of United States Senator. Where did that come from? Not from the short ballot association. Not those people who believe in cutting the tail off the kite, but it came from the people who wanted to participate in government, in local government, in

State self-government, and, are we now at this time to say that we shall reject these theories and principles that we advocated and confirmed only a short time ago?

What have we done already in this Convention? We have proposed to the people of the State of New York that they are sufficiently able to be trusted in their local affairs, and we have said to them you may have home rule. You are not degenerates. You know how to discriminate. You can select your officers, and incidentally you may pass intelligently upon a charter consisting of perhaps five hundred pages and thousands, several thousands of paragraphs and amendments. Certainly that never came from this short ballot association. Now they say that this system, as was suggested by Mr. Nicoll this morning, is in the interest of efficiency and economy, and I wrote down what Mr. Nicoll said, that the—or what Mr. Tanner said, that the governmental increase in expenditures in this State from 1895 to 1914 has been 235 per cent. Well, just to find out where that increase came from, I looked up five elective officials and five appointive officials and I found that the increase in the case of the five appointive officials was 721 per cent. Now, I also was reminded when I did that of what I heard Mr. E. N. Smith say when he was talking the other day on conservation.

Mr. Foley—What was the increase in the case of elective officials; did you look them up?

Mr. Wiggins—Yes, I looked up the elective officials. I thought some one would ask for them. The elective officers increased 390, per cent., and the appointive, 721 per cent. Now, when Mr. E. N. Smith was talking the other day with reference to the subject of conservation he referred to the great loss in the number of acres of land in this State which was now being tilled. That is under, I presume, the Commissioner of Agriculture. Whether he is responsible for it or not, I don't know, but he gave these very startling figures which I jotted down at the time. He said that in 1900 there was under cultivation 15,599,000 acres of land; ten years later 14,844,000; that during those ten years we lost 750,000 acres of tillable land; which was abandoned as farm property, or had gone into waste land, or was used for some other purpose. Now, perhaps that may not have been due to the fact that the Commissioner of Agriculture was appointed. I do not know what it was due to, but I believe if he had been an elective official that the people would have known, because that would have been one of the issues upon which he would have placed himself before the people of this State for re-election. Now, somebody said that this is going to eliminate invisible government. We people in the country don't know what invisible government

is. We would not know it if we saw it walking through the halls here. Then somebody says, it is a boss. Well, now, I assume there are some practical men here, and I assume that every practical man would say that it is easier to handle one man than it is to handle seven, and from my standpoint I believe that when you have one man at the head of this government, when one man is controlling all of the activities of the State, that then you will have the greatest invisible government that this or any other State in the Union has ever seen. No Governor will be able to nominate himself. You will have the bosses do it for him. This man in this county, that man in another county, some other man somewhere, a promise here and a promise there, and invisible government will thrive in this State as it has never before.

If you give unto the Governor the right to appoint all the officials of this State, it is going to mean that it is very easy indeed for both political parties of this State to get together and, under direct nominations, the large cities can nominate any one whom they choose and go fishing on election day. It will make no difference and, when that has been done, those great interests that we hear about through the newspapers and are told are still alive will have this State in a grip they never had it in before. Now, it is the same old theory that Mr. Justice Andrews referred to when he was here when we had the Magna Charta celebration. In speaking about the Constitution and the changes that have been made, he used these very significant words: "The Constitution of 1846 was the most radical and sweeping change in respect to the rights of the people to participate in the election of public officers. But the officers of State, the officers of counties, the officers of municipalities, the appointment of these was vested in the people, and to be elected by them. It has been formulated in the light of experience and by the recognition from time to time of the capacity of the people of the government to take a larger and more direct participation in public affairs. Indeed, the progress of the world has been upon evolutionary rather than volcanic lines. It has been the surest assurance of reform in society and in government, that they have gradually taken place in the history of the world. "There was a distrust of the people, as I have said, in the first constitution of the State, but that has given way to the recognition of the fact of the capacity and the right of the people to take a larger share in the administration of the affairs of government." Now, these very innocent sounding words mean a reaching out for power. It is a question of autocracy on the one side against the masses of the people on the other, and I do not see any cobweb, like Mr. Quigg did, before me, but I see three great big bars that the short ballot men would

like to knock down. The first one is the elective State officers of the State of New York. When they have knocked those down, you have taken the first step toward autocracy; and the next one they want to knock down, and you have heard them speak on the subject, when they were asked questions, — and that is the elective judiciary; they first wished to knock down the bar of elective State officers, and then they break down the bar of the elective judiciary, and then the hand reaches out into the counties, and what do they wish to do there? They want to appoint county judges, district attorneys, sheriffs, coroners, and the officers that control all the affairs of our localities, and when that has been done, what will happen? Why, this octopus from Albany will reach out in every direction, and the State of New York will be in the grip of one man, who has the appointment of all the officials. If you want to do it, you want to make this job complete, so that the issue can be strongly defined and placed before the people in its proper light, and in all that I say, I have in mind you have got the votes, if you want to make a complete job of it, make it the Governor alone. What good is the Lieutenant-Governor, except to Syracuse. He is a figurehead attachment. He comes down here while the Legislature is in session. He might just as well be the presiding officer of the Senate. Strike him out. Let us do what the Short Ballot Association says in this pamphlet. It devotes two pages to the reasons why they think all these officers should be placed in the appointive list. On page 10 it gives special reasons for the appointment of the Comptroller; below that it gives special reasons for making the Attorney-General appointive, and yet there are two officers placed in here.

Let us strike them from the list and let us present this matter to the State in its true light, and don't say, as Mr. Stimson did this morning, it is a step forward, and another step to-morrow, and another step the next day, and so on it will go. Why not go forth and tell the people of the State that they are degenerate, that you take away their power of self-government, and the right to select their official. And if you do, what will happen? Why, if you make these officers appointive and go to the people of the State of New York and say this fall we have taken away the right of election, you might just as well write down at the bottom of Mr. Tanner's bill these words: "Upon the flowers of promise lies the frost of death." Mr. Nicoll had it right this morning. He only misquoted. He simply misquoted, perhaps, because that is what he felt. He said that changes in constitutions are gradual. That the stone which the builder rejects to-day in the making of one constitution is the stone which becomes the headstone of

the next. That headstone, Mr. Nicoll, is the headstone at the grave of this Constitution. You had it right, although perhaps you did not realize it. My very erudite and seductive friend this morning referred to the combination which is going to put this thing through, and he has got it right. It is a combination. It will go through. There will be no question about it. Then I heard him talk about the old lines and the old course; and then I heard him refer to the other crowd that went to Heaven, which, in justice to him, and in respect to his wishes I will not repeat. I sort of felt that it was the voice of Jacob and the hand of Esau, and that it was another one of those animals which ought to be placed in the zoological gardens, judging from the stripes upon the animal, and it is going through. All of us will get together, we will lend a hand, and this Constitution will go through — for the benefit of the people of the State of New York. I know it is sickening to some of these gentlemen to refer to the fundamental principles of American government and that the source of power in the State should remain there; but you, gentlemen, must remember that when you go from this room for the purpose of saying to the people that we have done something for them they will ask the question, "what have you given and what have you taken away?" And we say to them we have taken away your right of self-government, —

Mr. Brackett — I was waiting for you to finish your sentence. I wish to ask you this question, that if it is possible in your judgment, Mr. Quigg, instead of seeing a lion beyond the cobwebs indeed saw the Tammany tiger.

Mr. T. F. Smith — Mr. Wiggins, are you not mistaken, was it not an elephant you saw?

Mr. Wiggins — I do not know what kind of an animal, but whether there be one or many, they are all in the same cage; they are all in the same cage. They were all drawing the same load, and they were attempting to draw the load successfully over the hill and down towards the people, and I believe that when they do and when they get back and say to the people of the State of New York that we have taken away from them the right of self-government in the selection of their officers, and that it is just the first step in that direction, you might as well go out of this hall and write over the doorway, "after us the deluge."

Mr. Root — I have had great doubt as to whether or not I should impose any remarks on this bill upon the Convention, especially after my friend Mr. Quigg has so ingeniously made it difficult for me to speak; but I have been so long deeply interested in the subject of this bill, and I shall have so few opportunities hereafter, perhaps never another, that I cannot refrain from

testifying to my faith upon the principles of government which underlie the measure that is before us, and putting upon this record for whatever it may be worth the conclusion, which I have reached upon the teachings of long experience in many positions, through many years of participation in the public affairs of this State and in observation of them. I wish, in the first place, to say something suggested by the question of my friend, Mr. Brackett, as to where this short ballot idea came from. It came up out of the dark, he says. Let us see. In 1910, Governor Hughes, in his annual message, said this to the Legislature of the State: "There should be a reduction in the number of elective officers. The ends of democracy would be better attained to the extent that the attention of the voters may be fixed on comparatively two offices, the incumbents of which can be strictly accountable for administration. This will tend to promote efficiency in public office by increasing the effectiveness of the voter and by diminishing the opportunities of political manipulators to take advantage of the multiplicity of elective officers to perfect their schemes at the public expense. I am in favor of as few elective officers as may be consistent with proper accountability to the people, and the short ballot, which would be an improvement, I believe, in the state administration if the executive responsibility was centered in the governor who should appoint a cabinet of administrative heads, accountable to him and charged with the duties now devolved upon elective state officers." Following that message from Governor Hughes, to whom a large part of the people of this State look with respect and honor, a resolution for the amendment to the Constitution was introduced in the Assembly of 1910. That resolution provided for the appointment of all State officers, except the Governor and the Lieutenant-Governor. There was a hot contest upon the floor. Speaker Wadsworth, "Young Jim," came down from the Speaker's chair to advocate the measure, and Jesse Phillips, sitting before me, voted for it. And so, in the practical affairs of this State, the movement out of which came this bill had its start upon the floor of the State Legislature.

Hughes and Wadsworth, one drawing from his experience as Governor, and the other from his observations of public affairs, from the desk of the Speaker of the Assembly, were its sponsors. Time passed, and in 1912 the movement had gained such headway among the people of the State that the Republican Convention of that year declared its adherence to the principle of the short ballot, and the Progressive Convention, in framing that platform, under which 200,000 — it is safe, is it not, to say 200,000 of the Republican voters of this State followed Roosevelt as their leader, rather

than Taft — the Progressive Convention, in framing that platform, declared: "We favor the short ballot principle and appropriate constitutional amendments." So two parties, and all branches of the Republican party at least committed themselves to the position that Hughes and Wadsworth took in the Assembly of 1910. In 1913, after the great defeat of 1912, when the Republicans of the State were seeking to bring back to their support, the multitudes that had gone off with the Progressive movement, when they were seeking to offer a program of constructive forward movement in which the Republican party should be the leader, Republicans met in a great mass meeting in the city of New York, on the 5th of December of that year, 1913. Nine hundred and seventy Republicans were there from all parts of the State. It was a crisis in the affairs of the Republican party. The party must commend itself to the people of the State, or it was gone. Twenty-eight members of this Convention were there, and in that meeting, free to all, open to full discussion, after amendments had been offered, discussed and voted upon, this resolution was adopted: "Whereas this practice (referring to the long ballot) is also in violation of the best principles of organization which require that the governor, who, under the constitution, is the responsible chief executive, should be so in fact and that he should have the power to select his official agents, therefore, be it Resolved, That we favor the application to the state government of the principle of the short ballot, which is that only those officers shall be elective which are important enough to attract and deserve public attention; and be it further Resolved, That in compliance with this principle we urge the representatives of the Republican party in this state, in the senate and assembly, to support a resolution providing for the submission to the people of an amendment to the constitution, under which amendment it will be the duty of the Governor to appoint the secretary of state, the state treasurer, the comptroller, the attorney-general, and the state engineer and surveyor, leaving only the governor and lieutenant-governor as elective executive officers."

That resolution, I say, after full discussion was unanimously adopted by the 970 representative Republicans who had met there to present to the people of the State a constructive program for the party. Mr. Frederick C. Tanner is chairman of this Committee on Governor and Other State Officers to-day, because it was he who offered the resolution in that meeting that was unanimously approved by those 970 Republicans. He is executing a mandate. He is carrying out policy. He is fulfilling a pledge to the people. The time went on and the following winter, in the Assembly of 1914, a new resolution was introduced following the terms of this

resolution of the mass meeting, following the terms of the Hughes-Wadsworth resolution of 1910, providing that all these State officers except the Governor and Lieutenant-Governor should be appointed. That resolution passed the Assembly and every Republican in the Assembly voted for it. It never came to a vote in the Senate. Voting for that resolution were four members of the Assembly, who now sit in this Convention; Mr. Bockes, Mr. Eisner, Mr. Hinman, and Mr. Mathewson. Time passed on and in the autumn of 1914 a Republican Convention met at Saratoga; an unofficial convention, we are told. Unofficial? Negligible! Here is the law under which it was called, Section 45 of the Election Law: "Nothing contained in this chapter shall prevent a party from holding party conventions to be constituted in such manner and to have such powers in relation to formulating party platforms and policies and the transaction of business relating to party affairs as the rules and regulations of the party may provide, not inconsistent with the provisions of this chapter". That convention was thus called more specifically and solemnly to frame a platform than any other convention that ever met in this State, for that was its sole business. That is what it was there for, to define, to declare, to set before the people the faith and policies of the Republican party, and in that convention there was a report from the Committee on Rules, which embodied deliberation, full discussion and mature judgment such as no report that ever came to a political convention within my experience ever had. The great mass meeting of December 5th, 1913, had directed the appointment of a committee of thirty to meet and consider and prepare for submission to the convention a statement of the views of the Republican party regarding the new Constitution. That Committee was appointed; it met two or three days before the convention in the city of Saratoga. It met in the office of my friend, Mr. Brackett, and there day after day it discussed the subject, reached and voted upon its conclusions and framed a report. Let me say here, that Senator Brackett never agreed with the committee. He has been consistent and honest and open in the declaration of his views from first to last, but he was voted down in the Committee of Thirty. Their report favoring a short ballot, among other things, was presented to the convention. That report was referred to the Committee on Resolutions of the convention, a committee of 42 members; among them were twelve members of this Convention, and that Committee on Resolutions took up the report of the Committee of Thirty and discussed it all day, and they voted upon it and again Mr. Brackett's view was voted down, and the Committee on Resolutions reported to the convention the plank in favor of the short ballot that has been read to you.

Mr. Brackett — Will the Senator permit an interruption? I know you have not intentionally made a misstatement, but you will recall that a report of the Committee of Thirty was not presented to the Committee on Platform until an hour before the convention, in the little room at the end of the piazza — before the convention met.

Mr. Root — It is a fact, and that room was the scene of excited and hot controversy for a long period over the adoption of that report, which was in part adopted and in part rejected.

Mr. Brackett — If you will pardon a suggestion, you said for a long period. It was, I think, about an hour and a half.

Mr. Deyo — I think that lasted until the following day.

Mr. Root — It did. Now, when it came to the convention there was no doubt about the subject we were talking on. The temporary chairman of the convention had said to the convention, "The reflections which arise from considering the relations of the Executive and the Legislature lead inevitably to another field of reform in State government. That is the adoption of the short ballot. That is demanded both for the efficiency of our elective system and the efficiency of government after election." And then, after stating the first, he proceeded: "The most obvious step toward simplifying the ballot in this State is to have the heads of executive departments appointed by the Governor, etc." Still more important would be the effect of such a change upon the efficiency of government. The most important thing in constituting government is to unite responsibility with power, so that a certain known person may be definitely responsible for what ought to be done; to be rewarded if he does it, punished if he does not do it, and that the person held responsible shall have the power to do the thing. Under our system we have divided executive power among many separately elected heads of departments, and we have thus obscured responsibility, because in the complicated affairs of our government it is hard for the best informed to know who is to be blamed, or who is to be praised, who ought to be rewarded and who punished. At the same time that the Governor is empowered to appoint the heads of executive departments and made responsible for their conduct, there ought to be a general reorganization of the executive branch of our government." After that, Mr. Chairman, came the report of the Committee on Resolutions, and Mr. Brackett submitted a minority report, taking substantially the position which he has taken here. That minority report was read, and it was argued at length. Amendments were offered and discussed. Mr. Brackett, I repeat, was heard at length upon it, and what he then called the "great council of the party." The convention elected and organized to make a platform, and he was

beaten; beaten fighting manfully for his opinions, but he was beaten. The Republican party went to the people at the coming election upon the declaration that it was in favor of applying the principle of the short ballot to the selection of executive officers.

Now, let me turn to the other side of the story. When the resolution for the short ballot, simon-pure, making all the State officers but the Governor and Lieutenant-Governor appointive, was before the Assembly of 1914, Mr. A. E. Smith, the member of this Convention whose attractive personality has so impressed itself upon every member, moved an amendment to limit the change to appointment of the Secretary of State, State Engineer and Surveyor and State Treasurer, leaving the Comptroller and Attorney-General elective. Upon that amendment the Democrats of the Assembly stood, voting with him. When the Democratic convention met in that autumn they put themselves on Mr. Smith's platform, approved his action and that of the Democrats in the Assembly and declared in favor of exactly what he called for in his amendment — the election of the Comptroller and the Attorney-General and the appointment of all the other officers. So you have this movement, not coming up out of the dark, but begun by a great Governor and advocated by a great Speaker, both of whom have received the approval of their country, one by being elevated to the bench of the Supreme Court of the United States and the other to the Senate of the United States. You have the movement progressing step by step until it has received the almost universal assent, the final and decisive action of the party to which that Governor and that Speaker belong, repeated over and over and over again, fully thought out and discussed; and you have the other party accepting the principle, agreeing to the application of it, with the exception of the Comptroller and the Attorney-General. Now, we must vote according to our consciences. We are not bound — no legislative body is bound legally by a platform. But, Mr. Chairman, if there is faith in parties, if there is ever to be a party platform put out again, to which a man can subscribe or for which he can vote without a sense of futility, without a sense of being engaged in a confidence game; if all the declarations of principle by political parties are not to be regarded as false pretense, as humbug, as a parcel of lies, we must stand by the principles upon which we were all elected to this Convention. There is one thing, and, in so far as I know, only one thing, that the vast majority of us have assured the people who elected us we would do in this Convention, and that is that we would stand by the position of Hughes and Wadsworth. I, for one, am going to do it. If I

form a correct judgment of the self-respecting men of this Convention, it will be with a great company that I do it. But, Mr. Chairman, don't let us rest on that. Why was it that these conventions, one after another, four of them, declared to the people that they were for the principle of this bill? In the first place, our knowledge of human nature shows us that the thousands of experienced men in these conventions and meetings had come to the conclusion that that principle met with the opinion of the people of the State. It is all very well for Mr. Quigg to tell us what the men he met in Columbia county said, for Mr. Green to write letters to his friends in Binghamton, but 970 men in that mass meeting on the 5th of December told you what their observation was, that they would commend their party to the people of this State by declaring this principle. A thousand and odd men in the Republican conventions of 1912, 1913 and 1914 have given proof conclusive of what their observation of public opinion was. A thousand and odd men in the Democratic convention of 1914 have given proof conclusive of what their observation of public opinion was. Conventions don't put planks in platforms to drive away votes.

Again I ask, why was it that they thought that these principles would commend their tickets to the people of the State? Why was it that the people of the State had given evidence to these thousands of experienced men in the politics of the State that those principles would be popular? Well, of course, you cannot escape the conclusion that it was because the people of the State found something wrong about the government of the State. My friend, Mr. Brackett, sees nothing wrong about it. He has been for fifteen years in the Senate; I suppose he could have stayed there as long as he wanted to. He is honored and respected and has his own way in Saratoga county. Why should he see anything wrong? My friend, Mr. Green, is comfortably settled in the excise Department, and he sees nothing wrong. Mr. Chairman, there never was a reform in administration in this world which did not have to make its way against the strong feeling of good, honest men, concerned in existing methods of administration, and who saw nothing wrong. Never! It is no impeachment to a man's honesty, his integrity, that he thinks the methods that he is familiar with and in which he is engaged are all right. But you cannot make any improvement in this world without overriding the satisfaction that men have in the things as they are, and of which they are a contented and successful part. I say that the growth, extension, general acceptance of this principle shows that all these experienced politicians and citizens in all these Conventions felt that the people of the State saw something

wrong in our State government, and we are here charged with a duty, not of closing our eyes, but of opening them, and seeing, if we can, what it was that was wrong. Now, anybody can see that all these 152 outlying agencies, big and little, lying around loose, accountable to nobody, spending all the money they could get, violate every principle of economy, of efficiency, of the proper transaction of business. Everyone can see that all around us are political organizations carrying on the business of government, that have learned their lesson from the great business organizations which have been so phenomenally successful in recent years.

The governments of our cities: Why, twenty years ago, when James Bryce wrote his "American Commonwealth," the government of American cities was a byword and a shame for Americans all over the world. Heaven be thanked, the government of our cities has now gone far toward redeeming itself and us from that disgrace, and the government of American cities to-day is in the main far superior to the government of American States. I challenge contradiction to that statement. How has it been reached? How have our cities been lifted up from the low grade of incompetency and corruption on which they stood when the "American Commonwealth" was written? It has been done by applying the principles of this bill to city government, by giving power to the men elected by the people to do the things for which they were elected. So I say it is quite plain that that is not all. It is not all. I am going to discuss a subject now that goes back to the beginning of the political life of the oldest man in this Convention, and one to which we cannot close our eyes, if we keep the obligations of our oath. We talk about the government of the Constitution. We have spent many days in discussing the powers of this and that and the other officer. What is the government of this State? What has it been during the forty years of my acquaintance with it? The government of the constitution? Oh, no; not half the time, or half way. When I asked what did the people find wrong in our State government, my mind goes back to those periodic fits of public rage in which the people rouse up and tear down the political leader, first of one party and then of the other party. It goes on to the public feeling of resentment against the control of party organizations, of both parties and of all parties. Now, I treat this subject in my own mind not as a personal question to any man. I am talking about the system. From the days of Fenton, and Conklin, and Arthur and Cornell, and Platt, from the days of David B. Hill, down to the present time the government of the State has presented two different lines of activity, one of the constitutional and statutory officers of the State, and the other of the party

leaders, — they call them party bosses. They call the system — I don't coin the phrase, I adopt it because it carries its own meaning — the system they call "invisible government" for I don't remember how many years, Mr. Conkling was the supreme ruler in this State; the Governor did not count, the legislatures did not count; comptrollers and secretaries of state and what not, did not count. It was what Mr. Conkling said, and in a great outburst of public rage he was pulled down. Then Mr. Platt ruled the State; for nigh upon twenty years he ruled it. It was not the Governor; it was not the Legislature; it was not any elected officers; it was Mr. Platt. And the capitol was not here; it was at 49 Broadway; Mr. Platt and his lieutenants. It makes no difference what name you give, whether you call it Fenton or Conkling or Cornell or Arthur or Platt, or by the names of men now living. The ruler of the State during the greater part of the forty years of my acquaintance with the State government has not been any man authorized by the Constitution or by the law, and, sir, there is throughout the length and width of this State a deep and sullen and long-continued resentment at being governed thus by men not of the people's choosing. The party leader is elected by no one, accountable to no one, bound by no oath of office, removable by no one. Ah! My friends here have talked about this bill's creating an autocracy. The word points with admirable facility the very opposite reason for the bill. It is to destroy autocracy and restore power so far as may be to the men elected by the people, accountable to the people, removable by the people. I don't criticise the men of the invisible government. How can I? I have known them all, and among them have been some of my dearest friends. I can never forget the deep sense of indignation that I felt in the abuse that was heaped upon Chester A. Arthur, whom I honored and loved, when he was attacked because he held the position of political leader. It is all wrong. It is all wrong that a government not authorized by the people should be continued superior to the government that is authorized by the people.

How is it accomplished? How is it done? Mr. Chairman, it is done by the use of patronage, and the patronage that my friends on the other side of this question have been arguing and pleading for in this Convention is the power to continue that invisible government against that authorized by the people. Everywhere, sir, that these two systems of government co-exist, there is a conflict day by day, and year by year, between two principles of appointment to office, two radically opposed principles. The elected officer or the appointed officer, the lawful officer who is to be held responsible for the administration of his office, desires to get men

into the different positions of his office who will do their work in a way that is creditable to him and his administration. Whether it be a president appointing a judge, or a governor appointing a superintendent of public works, whatever it may be, the officer wants to make a success, and he wants to get the man selected upon the ground of his ability to do the work. How is it about the boss? What does the boss have to do? He has to urge the appointment of a man whose appointment will consolidate his power and preserve the organization. There has been hardly a day for the last sixteen years when I have not seen those two principles come in conflict. The invisible government proceeds to build up and maintain its power by a reversal of the fundamental principle of good government, which is that men should be selected to perform the duties of the office; and to substitute the idea that men should be appointed to office for the preservation and enhancement and power of the political leader. The one, the true one, looks upon appointment to office with a view to the service that can be given to the public. The other, the false one, looks upon appointment to office with a view to what can be gotten out of it. Gentlemen of the Convention, I appeal to your knowledge of facts. Every one of you knows that what I say about the use of patronage under the system of invisible government is true. Louis Marshall told us the other day about the appointment of wardens in the Adirondacks, hotel keepers and people living there, to render no service whatever. They were appointed not for the service to the State that they were to render, they were appointed for the service they were to render to promote the power of a political organization. Mr. Chairman, we all know that the halls of this capitol swarm with men during the session of the Legislature on pay day. A great number, seldom here, rendering no service, are put on the payrolls as a matter of patronage, not of service, but of party patronage. Both parties are alike; all parties are alike. The system extends through all. Ah, Mr. Chairman, that system finds its opportunity in the division of powers, in a six-headed executive, in which, by the natural workings of human nature there shall be opposition and discord and the playing of one force against the other, and so, when we refuse to make one governor elected by the people the real chief executive, we make inevitable the setting up of a chief executive not selected by the people, not acting for the people's interest, but for the selfish interest of the few who control the party, whichever party it may be. Think for a moment of what this patronage system means. How many of you are there who would be willing to do to your private client, or customer, or any private trust, or to a friend or neighbor, what you see being done

to the State of New York every year of your lives in the taking of money out of her treasury without service? We can, when we are in a private station, pass on without much attention to inveterate abuses. We can say to ourselves, I know it is wrong, I wish it could be set right; it cannot be set right, I will do nothing. But here, here, we face the duty, we cannot escape it, we are bound to do our work, face to face, in clear recognition of the truth, unpalatable, deplorable as it may be, and the truth is that what the unerring instinct of the democracy of our State has seen in this government is that a different standard of morality is applied to the conduct of affairs of State than that which is applied in private affairs. I have been told forty times since this Convention met that you cannot change it. We can try, can't we? I deny that we cannot change it. I repel that cynical assumption which is born of the lethargy that comes from poisoned air during all these years. I assert that this perversion of democracy, this robbing democracy of its virility, can be changed as truly as the system under which Walpole governed the commons of England, by bribery, as truly as the atmosphere which made the *credit mobilier* scandal possible in the Congress of the United States and has been blown away by the force of public opinion. We cannot change it in a moment, but we can do our share. We can take this one step towards, not robbing the people of their part in government, but toward robbing an irresponsible autocracy of its indefensible and unjust and undemocratic control of government, and restoring it to the people to be exercised by the men of their choice and their control.

Mr. Chairman, this Convention is a great event in the life of every man in this room. A body which sits but once in twenty years to deal with the fundamental law of the State deals not only for the present but for the future, not only by its results but by its example. Opportunity knocks at the door of every man in this assemblage, an opportunity which will never come again to most of us. While millions of men are fighting and dying for their countries across the ocean, while government is become serious, sober, almost alarming in its effect upon the happiness of the lives of all that are dearest to us, it is our inestimable privilege to do something here in moving our beloved State along the pathway towards better and purer government, a more pervasive morality and a more effective exercise of the powers of government which preserve the liberty of the people. When you go back to your homes and review the record of the summer, you will find in it cause for your children and your children's children, who will review the Convention of 1915 as we have been reviewing the work of the preceding Conventions,

to say, my father, my grandfather, helped to do this work for our State. Mr. Chairman, there is a plain old house in the hills of Oneida, overlooking the valley of the Mohawk, where truth and honor dwelt in my youth. When I go back, as I am about to go, to spend my declining years, I mean to go with the feeling that I can say I have not failed to speak and to act in accordance with the lessons that I learned there from the God of my fathers. God grant that this opportunity for service to our country and our State may not be neglected by any of the men for whom I feel so deep a friendship in this Convention.

Mr. Betts — Mr. Chairman, when Grover Cleveland was President of the United States and Thomas A. Bayard was Secretary of State, Mr. Bayard and Mr. Ingalls of Kansas were entertained at a banquet in Wilmont, Delaware. When the oysters were being served Bayard turned to Ingalls and said: "Senator, I understand that oysters are a great brain food." "Yes," said the Senator, "they certainly are." "But," said Bayard, "I understand that you produce no oysters in Kansas." "No," said the Senator, "God sent the oysters where they were most needed." Don't ask me why a once distinguished citizen selected for his permanent residence Oyster Bay! When Governor Hughes started his direct primary agitation, and President Schurman of Cornell University took issue with him, I read the speech of President Schurman, and I was convinced that the direct primary was the first step back toward a pure democracy, and I opposed direct primaries. I was criticized at the time for opposing the opinion of the Governor. In a speech delivered at that time I quoted the following: "We all dread a bodily paralysis and make use of every contrivance to avoid it, but none of us are troubled about a paralysis of the mind — Epictetus." "I want to say right here," I added, "that I yield to no man in giving a proper respect as a citizen to the opinion of the chief executive of the State. But we dishonor and disrespect ourselves when we carry our respect for the opinions of others to the point of mental paralysis and accept them with blind and unreasoning faith. Therefore, I have no more hesitancy in disagreeing with the opinions of the Governor when I believe his opinions to be wrong than I have in disagreeing with the opinions of the humblest citizen of the State." I am in the same position to-day. I have no more hesitancy in disagreeing with the opinions of the distinguished President of this Convention, Senator Root, than I have in disagreeing with the opinions of the humblest citizen of the State. He says that in order to have responsible government we must give our State officials power, but he failed to tell you that they would have the same power if they were elected by the

people that they would have if they were appointed by the Governor. He says that Governor Hughes and Speaker Wadsworth originated the short ballot propaganda in this State. I happen to know a little something about that subject, and I hope the distinguished President of this Convention will pardon me for giving a correct history of that movement. In 1909, when I was taking issue with Governor Hughes on the direct primary proposition, I wrote an article against direct primaries in the Editorial Review. I sent a copy to President Schurman, and to Professor Ford, and to others for criticism. Professor Ford of Princeton University wrote me that an organization had been perfected which was a counter-movement to the direct primary movement and the initiative, referendum and recall, and that was the short ballot movement. He requested me to join the organization because it was a counter-movement to the movement back to a pure democracy. Speaker Wadsworth came to Lyons to make an address at the county fair. I told him what Professor Ford had written me, that I had joined the organization and advised him to do the same, because it was a movement to head off the populistic movement to go back to a pure democracy. Mr. Wadsworth joined that organization at that time, the same as I did, believing that it was a movement to check the pure democracy movement which was then being fostered by Bryan and other demagogues in the country. That is the way he came to join that association. I have found out since that this organization is being financed by the moneyed interests of the country; it has been sending out its plate matter to all the country newspapers and all the other newspapers and it has been keeping up a propaganda and the people have been deceived by calling this movement a short ballot movement. The words "short ballot" are a fraud. Stripped of all verbiage, stripped of all deception, it is simply a movement to take out of the hands of the people the right to elect their own State officers on the ground that they are incompetent to elect them themselves. There is no amount of sophistry that can be gilded with rainbow eloquence which can wipe out this fact. Mr. Parsons said, in reply to Mr. Wiggins, that the men whom he discovered were corrupt, were men who were elected by the people, and then he proposes to have one man elected by the people and give him full control of the government. If men are corrupt because they are elected by the people, why do you provide for just one man elected by the people when, if he goes wrong, the whole government will go wrong? I am opposed to this proposition. I do not object to the bill, in the main, as presented by the Committee. I do not object to the consolidation of departments in the interest of efficiency and economy, but I do object to

taking out of the hands of the people the right to elect their own officers. Mr. Tanner said that the Committee had raised the dignity and power and influence of these departments, so that the head of each department is now made impeachable by the representatives of the people, the same as the Governor. In the name of God, if you have made these departments so important that their heads are impeachable by the representatives of the people why don't you make them responsible to the people instead of being responsible to the Governor? That is the only issue which I raise on this bill, that the heads of the departments should be elected by the people instead of being appointed by the Governor.

The distinguished President of this Convention, Senator Root, referred to Governor Hughes and his influence in this State, but a great many people have short memories. I have great admiration for Governor Hughes. He is a very intellectual man, but he came to the office of Governor with no previous political experience. He did not start the Short Ballot movement in this State. If you put all the power in the hands of the Governor and a Governor is elected who has no political experience, you are a hundred times worse off with this system than you were with the old system. If you put in the Governor's office a man who is a politician, then you have created a despotism that will require a revolution to overthrow the despot. When you take out of the hands of the people, as the men who advocate the short ballot want to do, the right to elect judges of the courts, the right to elect the State officers, and center all that power in the hands of the Governor, you have created a political despotism that will lead to revolution. We have checked the movement back toward a pure democracy by education and discussion. In the State of Wisconsin, the experimental station for all these theories, only last year the people at the polls killed the initiative, referendum and recall and Governor Phillip was elected Governor on a platform that called for the restoration of the convention system and the repeal of the direct primary system. The distinguished President of this Convention, Senator Root, says we should live up to party platforms. Well, now, I do not believe that the platform of the Republican party, or of the Democratic party, or of any other party has any place in this Convention. We were elected by the people as delegates to come here and revise the Constitution, not as politicians, not as Republicans, not as Democrats, but as revisers of the fundamental law of the State of New York. Any conference that took place in the Waldorf Astoria, or any Convention that was held in Saratoga, which was unofficial and which prefaced its resolutions by saying that it was intended to leave every member of the Convention free, should have no effect on this convention at all. If it does have an effect on this Con-

vention, as these people claim who want to carry into effect the short ballot proposition, then why don't they have the honesty and the honor and the manliness to say that we should carry out the rest of the provisions of the platform? I find in that platform this provision: "The State nominating convention was deliberately abolished in order to increase the powers of Tammany Hall and destroy the influence of the smaller communities. We reaffirm our declaration in the platform of 1912 in favor of the restoration of the state convention and the direct election of delegates to such convention, with the right of party electors to directly express their preference for nominations for state officers if they so desire." Why not restore the State convention? The remedy for the short ballot is to restore the State convention. A party can pick out candidates better than an individual. A party picks out candidates to advance the cause. An individual picks out candidates to advance himself. Let me read you a little on this question. I do not make any apology to this Convention for quoting Edmund Burke on the question of centralizing power in the hands of a single man. Burke says: "Many of the greatest tyrants on the records of history have begun their reigns in the fairest manner. *But the truth is, this unnatural power corrupts both the heart and the understanding.* And to prevent the least hope of amendment, a king is ever surrounded by a crowd of infamous flatterers, who find their account in keeping him from the least light of reason, till all ideas of rectitude and justice are utterly erased from his mind." Now, a Governor of this State, if he is a politician and has all this power, will not appoint to office bigger men than himself. He will appoint smaller men than himself. He will appoint men that he can control and use for his own advancement, but the Conventions would select big men, the same as they have done. Time and again we have had, and we have to-day, departments where the heads of those departments, are filling their positions with the same efficiency, ability and administrative genius that the Governors of the State of New York have displayed. Walter Bagehot, one of the great English writers on politics, in speaking of the relative merits of the monarch and the party picking out candidates, said: "If the constitutional monarch be a man of singular discernment, of unprejudiced disposition, and great political knowledge, he may pick out from the ranks of the divided party, is very best leader, even at a time when the party, if left to itself, would not nominate him."

The Chairman — Mr. Betts, if you will suspend for a moment, the Chair must announce that the ten minute rule became applicable at four o'clock.

Mr. Mereness — In view of the fact that Mr. Betts had the floor before the hour set for the commencement of the special rule, I ask unanimous consent that he be allowed to finish his remarks.

The Chairman — Unanimous consent is asked for, and, if there is no objection, Mr. Betts may proceed.

Mr. Betts — " If the sovereign be able to play the part of that thoroughly intelligent but perfectly disinterested spectator who is so prominent in the works of certain moralists, he may be able to choose better for his subjects, than they would choose for themselves. But if the monarch be not so exempt from prejudice and have not this nearly miraculous discernment, it is not likely that he will be able to make a wiser choice than the choice of the party itself. He certainly is not under the same motives to choose wisely." Then Bagehot goes on to say that the individual appoints men to advance his own interests instead of appointing them to advance the interests and the cause of the party. Now, in regard to the newspapers of the State and this propaganda, I want to say this, that the newspaper editors, as a rule, are rather lazy, and when free copy is sent out to them, they accept it and print it and do not take the trouble to look up where it came from. A great many editors sit like young swallows in a nest. When the old bird comes they open their mouths and the old bird can drop a shingle nail and they would take it as quickly as they would take anything else. That is the way that some editors have been doing with the short ballot propaganda. Why, when we had our State Press Convention at Syracuse, one of the editors said to me, " I think this short ballot proposition is a great proposition. What do you think about it? " I said, " What do you think it does? " He said, " It gets away from the Massachusetts ballot and this direct primary ballot and simplifies the ballot." " Why," I said, " no, that is not the object of the short ballot. It takes out of the hands of the people, it takes out of your hands the right to elect the State officers." " Well," he said, " if that is what it does, I do not want it." And he immediately went to the telegraph office and wired his office to kill his editorial. Now that is a sample of how intelligently the newspapers of the State have been discussing this question. But there is one paper up the State that tells the truth. Its motto is this: " He who conceals the truth from the people through motives of expediency is either a criminal or a coward or both.— Max Muller." That is at the head of the editorial column of The Lyons Republican, and then follows this editorial last week Friday: " The Short Ballot. We have frequently taken occasion to denounce the short ballot the same as we took occasion to denounce direct primaries.—

Mr. Brackett — Mr. Chairman, I rise to a point of order. It

is so noisy in the room that we cannot hear, and I am very close at that. This is good stuff and I want to hear it.

The Chairman — The sergeant-at-arms will see that order is preserved.

Mr. Betts — " We have frequently taken occasion to denounce the short ballot the same as we took occasion to denounce direct primaries. Our judgment relative to direct primaries has been vindicated by time and experience and if the short ballot, which is a bigger fraud than direct primaries, is ' put over ' on the people they will discover that we are telling them the truth when we say that a monarchy and a political despotism is more dangerous than is direct nominations. It is only necessary for an intelligent man to think in order to discover that the short ballot propaganda is a fraud. The idea that two or three inches less paper to a ballot would cure political ills is an absurdity that can only be considered with favor by the inmates of a political lunatic asylum. There is something back of this euphonious short ballot. There is a conspiracy which is financed lavishly for publicity purposes and it is not in the interest of the people. If the time ever comes when we take out of the hands of the people the right to elect their own State officers, if the time ever comes when only the Governor is elected and he is allowed to appoint all the other State officers, and is given control of the patronage in every department of the State, we will then have broken down the American system of elective representative democracy and installed in its place a monarchy and a political despotism. When that time comes the people might as well fold their hands and be resigned to their fate. They will have destroyed their own popular government. They will have placed in control of the State an aristocracy and and an autocracy.

" Under direct nomination the financiers of Wall street will get together and pick out the Republican candidate for Governor and the Democratic candidate for Governor, and they will furnish these candidates with the money to go out and buy the nomination under direct primaries. With the ignorant and purchasable vote in the cities of New York, Brooklyn, Buffalo and other cities, the candidate supplied with Wall street money can easily carry the primary. The rural voters of the State will be relegated to the rear. The people will have no voice in making the nominations because the people are not organized and cannot furnish the money for any particular candidate to go in a winning competition with the Wall street candidate. The result will be, after the financial interests have picked out the Republican and Democratic candidates and furnished them with the money to secure the nomination, the financiers will sit down and fold their hands, not

caring which candidate is elected, because whether the Republican or Democratic candidate is elected will make no difference to them. Having furnished the money to both of the candidates they will own the government whoever is elected. Representative government will be destroyed — aristocracy and autocracy and wealth will be in control. The people will have given up their right to self-government under the euphonious name of a short ballot. Can the people be so easily fooled? We think not!" Now, I have another paper here in line with this same editorial. I want to show you how admirably two constitutional minds run together. I have in my hand a copy of a Brooklyn paper which has the largest circulation in Brooklyn, and which is the only Republican paper in Greater New York. I read from the Brooklyn Standard Union, edited by my good friend William Berri: "In a Fool's Paradise About the Short Ballot, Perhaps? Who knows whether or not the masses of the people approve the so-called short ballot? There has never been any referendum on the question. If the average man were asked to elect a permanent Governor or President, endowed with the power to appoint all other officials and to remain in office during good behavior, he would decline emphatically. No one will be found to dispute that proposition seriously. The approach to monarchy would be too near to suit American ideas of freedom. The short ballot moves in the one-man-power direction. And it is for that reason strong doubt exists as to whether the people generally favor it. Possibly they favor some modification of the present State ballot, but that is not known for a certainty."

The Chairman — The Chair regrets to inform you that your added ten minutes have expired.

Mr. Betts — This is very short. I ask unanimous consent to complete this. The other speaker took an hour and a half.

Mr. Brackett — I rise to the point of order that, the speaker having started to speak before 4 o'clock is not subject to that limitation; and, further, that unanimous consent was had, not for ten minutes, but that he should finish his remarks.

The Chairman — The Chair understood that unanimous consent was asked for an additional ten minutes.

Mr. Betts — That was not the proposition. I only want to finish reading this.

Mr. Wickersham — Mr. Chairman, I do not want to interrupt the gentleman but I do object to having him read editorials to us here and take the time which is apportioned to a number of other speakers.

Mr. Brackett — He is adopting this as his language.

Mr. Betts — I am adopting this as my language. Others have

done the same thing. You allowed a man to read for an hour and a half the other night. This expresses my views very much better than I can do it, and I would like to read the balance.

Mr. Wickersham — I doubt it. No one can express your ideas better than you can do it yourself.

The Chairman — I understand that the gentleman will finish at the conclusion of the present editorial.

Mr. Betts — Yes, sir. " It is true the unofficial conventions of the principal parties in this State passed resolutions favoring the short ballot. Such action, however, should not be very convincing to the present chief advocates of a short ballot. They as strongly opposed the unofficial conventions as they favor now the short ballot. There is reason, too, for believing the endorsement of the short ballot was rather perfunctory. It is quite certain, at all events, the delegates were not chosen to these conventions on a short ballot issue. Again, when the professional reform organizations, which mostly represent the monied interest in politics, presented their case to the party leaders, the latter, not in the best of odor at the time because of their conservative opposition to the abolition of State nominating conventions — an opposition that has not died down yet — were rather anxious to find favor with the monied reformers. The short ballot is the forerunner of centralization. It stands in politics for exactly the things the monopolistic corporations stand for in commerce. Enormous power has been given by this means to a few in the business world, and the smaller man has been wiped out of existence or become a subordinate where once he competed for his share of prosperity as an independent business man. Concentration, concentration and then more concentration. That is ever the cry, and the so-called reform organizations, backed by the money of the monopolistic corporations, are trying now to force it on the State and the country. Their proposition to the Constitutional Convention was drastic. The way was prepared for it by an elaborate argument, printed in pamphlet form, and sent out in advance to the newspapers, where, by the way, many of the smug representatives of the short balloters hold forth in favor of concentration, both in city and State affairs. They give out the usual palaver about the bosses and the professional politicians being against the short ballot for their own purposes. Not so. The political boss naturally favors concentration. He would much rather take orders of a group of multi-millionaires assembled in some exclusive club to name the one man they desire to be elected Governor than seek to get united action from a large constituency. Besides, the multi-millionaires assure a big campaign fund. After election all the power of the State would be concentrated practically

in the hands of one controlled man, and the millions of patronage now awarded publicly by the elected representative of the people would be passed around in secrecy. The courts declare monopolistic corporations illegal and injurious which buy rival factories and dismantle them, discharging thousands of men and women from employment that prices may be better controlled and "efficiency" secured, with incidentally enormous profits. The short balloters want to dismantle the departments now ruled over by the elected representatives of the people and under the plea of efficiency and concentration elect a political monopolistic trust of large dimensions. But will the people be fooled by the bullies of 'big business?' These bullies, in and out of the newspapers, try to cry down all opposition to their schemes and promotion of practical politics or worse. The small business men, the clerks, the mechanics, the laborers, aye, and the professional men, too, in large numbers, know how conditions have been changed to their disadvantage by the concentration which, on the plea of securing efficiency, has deprived them of chances of advancement and independence they had once possessed. Perhaps these men favor the short ballot, advocated by every corporation attorney in the land, which concentrates all political power in the hands of a few men, and then again perhaps they are living in a fool's paradise, who believe the mass of the people favor depriving themselves of the power over public affairs they now possess by means of the so-called short ballot."

The Chairman — The gentleman's time has expired.

Mr. Tanner — I move that we take up the Proposed Amendment by sections. I move the first section.

Mr. Wickersham — Mr. Chairman, under the rule they adopted this morning speeches from now on are limited to ten minutes each, and the rule provides for the consideration of the measure section by section. I ask that the Secretary read Section 1.

Mr. Shipman — Mr. Chairman, I put my name down on the list on Friday. I wanted to make a brief explanation, as well as to criticise some features of the bill.

The Chairman — The Chair regrets very much there are a number of speakers who have not been heard from, who made their requests of the Chair as early as Friday last, and inasmuch as the Chair —

Mr. Shipman — I would like to have ten minutes for a personal explanation, because it is a statement on which part of this bill was founded.

The Chairman — Is it a question of personal privilege, Mr. Shipman?

Mr. Shipman — Something of that nature.

The Chairman — Please state it.

Mr. Shipman — Now, on last Friday, the introducer of this amendment, on page 3214 of the Record, in making a statement about the Secretary of the Department of Charities and Corrections, used these words: "The Mohansic State Hospital has cost over $800,000, and it has never had an inmate yet." Both propositions contained in that statement are untrue. I was appointed one of the first managers of that hospital, and elected president of it, and had charge since my appointment by Governor Hughes in 1910. The actual cost of running that hospital has been to date some $99,000. That is what it has cost up to last July. There has been spent on that site all together the sum of $433,000 — not $800,000. The figures have been doubled. And of that, $333,000 have been spent for the purchase of the site of 638 acres in Westchester county, for the making of roads through the place, for the building of a railroad from Yorktown to the site of the hospital at the cost of about $95,000, and for the improvement of the four farmhouses on that place. Further than that, we started immediately with 20 inmates. We have 75 inmates there now. We have done our duty as hospital managers. And further than that we have asked every Legislature from that date to this to give us an appropriation to build the buildings which in the act creating the hospital were estimated to cost $2,000,000, and this year is the first time we have secured a new appropriation. In 1912 an appropriation of $500,000 was given to us and we spent $1,300 and the rest of it lapsed. The Legislature passed a reappropriation of that amount of money and it was vetoed by the Governor. So that instead of doing useless work we have done the best we could with the slender means that were afforded.

Mr. Wickersham — I regret that I shall be obliged to say that the statement of the gentleman is not a question of personal privilege, and I call the attention of the Chair to that fact and ask that it be observed.

The Chairman — The point of order is well taken.

Mr. Shipman — I confine my remarks to the first section.

Mr. Wickersham — I was about to move that the first section be taken up, that it be read and then taken up.

Mr. Shipman — Then I will say only one more word and I will sit down. Mr. Tanner said that there were 152 boards. Now, as a matter of fact, 76 of those boards are purely complimentary. They don't cost the State one cent, and so far as the Mohansic State Hospital is concerned, I will say that we have never received one cent, not even for railroad fare, and I put my own stenographer at the disposal of the hospital there, so it has not cost the State of New York one cent.

The Chairman — The Secretary will read the first section.

Mr. Eisner — I rise to a question of personal privilege.

The Chairman — The gentleman will state his question.

Mr. Eisner — The question of personal privilege involves a matter of form rather than anything else. Yesterday I gave to you my name, or Saturday, I believe, that I desired to be heard upon this measure. Since that time other names have been given to you, some of which are names which were submitted subsequently to mine. Mr. Chairman, I am perfectly glad and willing to defer to gentlemen of greater age and experience than myself, and I don't care particularly to take up the time of the Convention, but I want to make this suggestion, and that is this, that when we come to discuss this question, section by section, if you are going to have the same men who have discussed it before generally, discussing the sections, that if those whose names were handed up since that, on Saturday, will have again to defer to those whom they gave way before, they will never be heard, and I submit, Mr. Chairman —

Mr. Byrne — Do you realize that you have company in your misery?

Mr. Eisner — I am glad of it.

Mr. Wickersham — Mr. Chairman, I suggest that the point of order is not well taken.

Mr. Eisner — Mr. Chairman, I did not rise to a point of order. I rose to a question of personal privilege.

Mr. Wickersham — There is no personal privilege involved.

Mr. Eisner — I want to suggest, Mr. Chairman, if Mr. Wickersham will permit me, that these first names which have been submitted to you, and those who have not been heard, that at least they receive some preference when it comes to discussing this section by section.

Mr. Chairman, I have not overburdened the record of this Convention since it began in April. I do not believe in being heard unless I have something to say, and that is why I am raising now this question of personal privilege, relying upon the fairness of the Chair to take care of those whose names have been submitted.

The Chairman — The Chair would inform the delegate that he is very sadly misinformed as to the order of the names. Everybody should have had his name in by Friday or early Saturday morning. The Chair has tried very hard to follow the order as the gentlemen have presented their names. The Chair endeavors to be as fair at it is possible to be, but the circumstance is a very trying one. So many delegates desire to be heard. I think, however, that the number can easily be accommodated during the reading of the proposals section by section, particularly if you take up no more time discussing the matter —

Mr. Byrne — Mr. Chairman, will there not be time enough when the Chair's tax bill is presented?

Mr. Eisner — Mr. Chairman, I merely suggest it when the matter is taken up section by section that those whose names have been submitted to you and who have not been heard, should receive some sort of preference in precedence. In other words, if we are going to have the same speakers all over again, those who were left in the discard before are going to be left in the discard again.

Mr. Wickersham — Mr. President, I desire to express the hope that the Chairman will find an opportunity to recognize the gentleman. He has not abused any privilege of the Convention or any member of this body, and I am sure that we will all be glad to hear him at the proper time.

The Chairman — The Clerk will proceed to read the section. Section 1. There shall be the following civil departments in the State Government: A department of Justice. A department of Finance. A department of the Treasury.

Mr. A. E. Smith — Mr. Chairman, will the whole section be read before amendments are offered?

The Chairman — Yes, the whole section will be read.

The Secretary — A department of Taxation. A department of Accounts. A department of State. A department of Public Works. A department of Health. A department of Agriculture. A department of Charities and Corrections. A department of Banking. A department of Insurance. A department of Labor and Industry. A department of Education. A department of Public Utilities. A department of Conservation. A department of Civil Service.

Mr. J. G. Saxe — I want to ask the majority leader and Mr. Tanner, who has charge of this bill, if Section 1, which is in the nature of a title and enumeration, may not be left until the last, so that in case any modifications are made, in any of the subsequent sections, when we take them up in their order, if any are stricken out, that this can be made to correspond, and it is really no more than an index, and with the consent of those two gentlemen, I will move that Section 1 be deferred until we have disposed of Section 22.

Mr. Tanner — Mr. Chairman, it seems to me that if any subsequent modification of any particular section is made, which would involve the work of an amendment that the proper course would be a motion to reconsider our action of Section one and amend it as we have indicated, when we have considered such sections separately. I think therefore that the order of procedure is to begin at the beginning and go through to the end.

Mr. Wadsworth — Mr. Chairman, I understand that the Chairman of the Committee is willing to have us go back if there are any necessary modifications.

Mr. J. G. Saxe — Mr. Chairman, if there be no objection to reconsidering that section, I will withdraw my motion, but I do feel —

Mr. Tanner — Mr. Chairman — a motion to reconsider with reference to such parts of Section 1 as we have decided to amend can be made, and then we can dispose of it according to the amendments or modifications indicated in subsequent sections.

Mr. J. G. Saxe — The difficulty, Mr. Chairman, with that mode of procedure is that we are kept more or less in the dark about these departments, in the debates upon some of the particular departments which I know are coming, although I do not expect myself to participate in them, and I am sure there will be a great deal more light thrown on the subject this afternoon or later this evening and I wish the Chairman would allow this particular motion to prevail. This section is no more than an index, just as it is in the case of any particular statute. I think Mr. Tanner ought to accept that amendment.

Mr. Tanner — I think that motion should prevail, Mr. Chairman. I see no reason for passing this at the present time. It will be very easy to correct Section 1 if the Convention desires to do so.

The Chairman — Do I understand that you accept the motion of Mr. Saxe?

Mr. Tanner — No, my own motion.

Mr. Wagner — I suppose it is hopeless now, but I was going to reinforce what Senator Saxe has said, that it is merely an enumeration of what follows in the bill, and that we cannot really consider intelligently Section 1, because it has no reference to the powers to be exercised by the different departments; for instance, take in the case of commissioner of accounts, unless my amendment, which I propose to offer as to the method of selecting that officer were not adopted, I would be in favor of omitting it from Section 1 entirely, and I think that the logical thing to do is to begin with Section 2, and then, when we reach one of the enumerated departments, discuss not only the question of whether or not it shall be a department, but also as to what power should be exercised, and how the head of it should be selected, and I think Senator Saxe has made a very wise suggestion which will save us a good deal of time in the discussion of this matter.

Mr. Marshall — I concur in the suggestions that have been made by Senators Saxe and Wagner. I assume that this section has been written merely for the purpose of allowing us to see just exactly what is in the minds of the Committee, and we shall now

go to the discussion of each of these departments, and when we decide which departments are to be adopted, it would be very easy to recast this entire article, so as to save much repetition of language, and to consolidate and to condense it into proper constitutional form. It does not strike me that it is desirable to have an article appear in the Constitution worded as this provision is, and I presume that it is offered merely for the purpose of debate. I have now in mind a number of amendments which I think will be adopted and which I think should be adopted along that line. As, for instance, what is the necessity, without mentioning these different departments to say that the —

Mr. Wickersham — Mr. Chairman, I think I can shorten this discussion by saying that if there is any gentleman that desires to do this, that we might pass Section 1 and begin Section 2 and save time.

Mr. Marshall — I think it would save a good deal of time.

Mr. Tanner — If I thought there was going to be such a waste of time on such a trivial matter I would not have opposed the motion. I therefore move Section 2, instead of Section 1.

The Chairman — The Secretary will read Section 2.

The Secretary — Section 2. At the session immediately following the adoption of this Constitution the Legislature shall provide by law for the appropriate assignment of all the civil, administrative and executive functions of the State government, except those of assistants in the office of the Governor, to the several departments in this article provided. Subject to the limitations contained in this article the Legislature may from time to time assign by law new powers and functions to departments, officers, boards or commissions continued or created under this Constitution, and increase, modify or diminish their powers and functions. No specific grant of power herein to a department shall prevent the Legislature from conferring additional powers upon such department. No new departments shall be created hereafter. Any bureau, board, commission or office hereafter created except assistants in the office of the Governor shall be placed in one of the departments enumerated in this article. The elective State officers in office at the time this Constitution takes effect shall continue in office until the end of the terms for which they were elected. Pending the assignment of the civil, executive and administrative functions by the Legislature pursuant to the direction of this section, the powers and duties of the several departments, boards, commissions and offices now existing are continued. Subject to the power of the Legislature to reduce the number of officers, when the powers and duties of any existing such powers, shall continue in office in such department, and their term of office shall not be shortened by such assignment.

Mr. Tanner — Mr. Chairman, I offer the following amendment to section 2, and I wish to state that it is to carry out the assurance that I gave to Mr. Smith in debate, either Friday or Saturday, that it was not the intention of the committee to make such assignments effective until January 1, 1917.

The Chairman — The Clerk will read the amendment offered by Mr. Tanner.

The Secretary — Section 2, page 2, line 14, after the word "assignment" insert "to take effect not earlier than January 1st, 1917".

The Chairman —Amendments to section 2 are in order. Are there any other amendments to section 2?

Mr. Wickersham — I move the adoption of the amendment.

The Chairman —The question is on the adoption of the amendment offered by Mr. Tanner, which has just been read by the Clerk.

Mr. Low — Mr. Chairman, I would like to move to amend by saying that it shall take effect on January 1st, 1917.

Mr. Tanner— The only objection to that is that you can perhaps see a contingency by which the Legislature might not complete the reorganization during the year 1916. The first line of the section is, "at the session immediately following the adoption of this Constitution, the Legislature shall provide", and so forth, and I think that the wording suggested would make it mandatory and they could not do it after that.

The Chairman — Does Mr. Low press his amendment?

Mr. Low — Yes, Mr. Chairman, because I think that the phraseology suggested by the Committee will make it possible to postpone this indefinitely.

The Chairman — The question is upon the amendment offered by Mr. Low to Mr. Tanner's amendment. Will the Clerk please state the same so it may be understood by the Committee?

Mr. Sheehan — Mr. Chairman, I assume the new Governor will not be in office till the 1st of January? That, of course, is the point of Mr. Tanner's amendment and that is the point of Mr. Smith's suggestion that this distribution of power should take place, not as a result of anything that the present officers may do, but whatever they do shall take place at least after January 1.

Mr. Stimson — Mr. Chairman, the view of the Committee was that there might be a portion of the work of assigning these functions which would be experimental which might not be able to be foreseen sufficiently to make it possible to take effect on a given date and the words "not earlier" were taken advisedly and I trust will not be amended.

Mr. D. Nicoll — Will you explain to the house, under that amendment, what that power will be? How are you going to compel this action?

The Chairman —Are you ready for the question?

Mr. Tanner — Mr. Chairman, I do not know to whom the question was directed. I understand the question to be what power there is to be to compel the Legislature. I don't believe, Mr. Chairman, it is to be assumed that a Legislature will deliberately disobey the mandate contained in the section. The wording of the section is pretty clear. It says: "At the session immediately following the adoption of this Constitution the Legislature shall provide by law for the appropriate assignment of all the civil, administrative and executive functions of the State government "— To take effect not earlier than a certain date.

Mr. Low — May I ask whether the Committee would not be willing to make it " not earlier than January 1 and not later than July 1."

Mr. Tanner — Mr. Chairman. If Mr. Low's question is addressed to me I think we are going a little too far in tying the Legislature down to a first and last day. I am willing to assume that they are going to carry out the mandate of the Constitution.

Mr. Quigg — Governor Hughes told us that for fifteen years the Legislature had disobeyed the mandate of the Constitution with respect to the provisions with regard to the race track gambling. It does happen, and would it not be better to make it very clear in this case?

Mr. Tanner — The sheriffs disobeyed that provision; the Legislature did not.

Mr. Bernstein — Mr. Chairman, what would happen if there should be a Legislature in power next year that would not feel that the judgment of this Convention in respect to the taking effect of this distribution of officers should prevail, and fixed the time, say, ten years hence. Is there anything to prevent that?

Mr. Tanner — They would never be returned to these halls if, after the people had voted for this Constitution which compelled them to do something, they refused to do so.

Mr. Bernstein — Is there anything to stop them except public opinion?

Mr. Tanner — The effect of public opinion and the Constitution, certainly nothing else.

Mr. Wagner — Mr. Chairman, I want to make a suggestion to Mr. Bernstein, if he wants to appease his conscience, that if he wanted to be sure of this, that within a certain time if it is not done, any taxpayer may bring a writ of mandamus compelling the Legislature to carry out these provisions.

Mr. Blauvelt — A tremendous task is being imposed upon the Legislature by this Convention, and I venture to say that no Legislature in any one year will be able to make these new distributions and assign the powers that are contemplated by the article. It will be physically impossible for the next Legislature to do the work that is outlined in that section to be done, and to meet that objection and the possibility the work will not be completed by the 1st of January, 1916, that these particular words were suggested as an amendment to the section, because as it was before, there might be a question as to the nature of a limitation that the Legislature shall provide by law for the appropriate assignment at the session immediately following the adoption of the Constitution. Now, the Constitution, if it is adopted, will be adopted and take effect as of January 1, 1916, and the section as it was originally drawn anticipated the Legislature's making all of the assignments and distributions of powers contemplated, and I think that is what Mr. Smith had in mind. Now, to meet that, the committee — and this particular language was incorporated to meet Mr. Smith's suggestion, that whatever is done during the coming year, it shall not take effect until January 1, 1917.

Mr. Dunlap — Senator Blauvelt, under the language in Section 2 it says: "At the session immediately following the adoption of this Constitution the Legislature shall provide," and so forth. Now, doesn't that limit it to the year 1916?

Mr. Blauvelt — I don't think so.

Mr. Dunlap — It says: "At the session immediately following the adoption" —

Mr. Blauvelt — That is directory, in my opinion, and not mandatory. I think it is unnecessary to debate that question, anyway. In fact, it has been held, I think, repeatedly that the language there used is directory and not mandatory.

Mr. Dunlap — Well, suppose they don't enact it in the year 1916.

Mr. Blauvelt — I think the Legislature in any subsequent year may continue the work of distribution and assignment of powers, and the speed with which the Legislature does it will depend to a certain extent upon the public interest in the subject and the demand upon the Legislature to do it.

Mr. Foley — Don't you know that the abolition of invisible government under this scheme — The Legislature will immediately respond?

Mr. Blauvelt — Why — excuse me if I fail to answer the Senator.

The Chairman — The question is on the amendment offered by Mr. Low to the amendment of Mr. Tanner. The Clerk will read.

The Secretary — By Mr. Low: Amendment to Mr. Tanner's amendment to section 2. Strike out the words " not earlier than " and insert the word " on ", making the amendment read " to take effect on January 1st, 1917 ".

The Chairman — All in favor will say Aye. Contrary, No. The amendment is lost. The Clerk will now read the amendment offered by Mr. Tanner.

The Secretary — Page 2, line 14, after the word " assignment " insert " to take effect not earlier than January 1st, 1917 ".

The Chairman — Are you ready for the question?

The Chairman — All in favor of the amendment will say Aye. Contrary, No. Carried. The Clerk will read section 3.

Mr. Marshall — Mr. Chairman, I have an amendment to section 2.

The Chairman — Mr. Marshall offers an amendment to section 2. The Clerk will read.

The Secretary — By Mr. Marshall. From line 18, page 2, strike out the word " article " and substitute the word " constitution ".

Mr. Marshall — I would like to explain that. It is proposed in section 2, at lines 17, 18, 19, 20 and 21, as follows: " Subject to the limitations contained in this article the legislature may from time to time assign by law new powers and functions to departments, officers, boards, or commissions continued or created under this constitution, and increase, modify or diminish their powers and functions ". Now, one of the departments sought to be corrected is the Department of Charities and Corrections. Section 12 provides: " The head of the department of charities and corrections shall be the secretary of charities and corrections. He shall have power of inspection and supervision of all state charitable institutions, state hospitals for the insane, state prisons and other state correctional institutions." Article 8, section 11, of the Constitution provides that " The legislature shall provide for a State Board of Charities which shall visit and inspect all institutions whether State, county, municipal, incorporated or not incorporated. * * * A State Commission in Lunacy which shall visit and inspect all institutions, either public or private, used for the care and treatment of the insane; a State Commission of Prisons which shall visit and inspect all institutions used for the detention of sane adults charged with or convicted of crime, or detained as witnesses or debtors." Now, that is in a different article. We are now dealing with article 5, and I have just read from article 8. Now, literally and reasonably construed, this proposal which I have just read contained in section 2 would put it into the power of the Legislature to take away practically all

of the powers of the State Board of Charities, and State Commission in Lunacy, and also State Hospital Commission or Commission of Prisons. A few days ago we passed upon the Steinbrink amendment which re-enacted these provisions. Now, I am at a loss to know why the word "article" shall be used in this section, and not the word "constitution".

Mr. Tanner — Mr. Chairman, I think Mr. Marshall is entirely right in this contention. When the original article was drafted that was before the action on the Steinbrink amendment, and the article that relates to charities and corrections recited the Prison Commission and the Charities Commission and the other. Then when Mr. Steinbrink's amendment was adopted by the Committee of the Whole, we made the article just as short as we could, and the head of Charities and Corrections, and what was specifically referred to as continued in our former article was left out in the second draft. I hope Mr. Marshall's amendment will prevail.

The Chairman — The question is upon the amendment offered by Mr. Marshall. The Clerk will read it.

The Chairman — Page 2, line 18, strike out the word "article" and substitute the word "constitution".

The Chairman — All in favor will say Aye, contrary No. Carried. Are there any further amendments to section 2?

Mr. Wagner — Mr. Chairman, I was going to suggest on line 9, after the word "officers" include "or employees", and also on line 10 — this is page 3 — line 9, after the word "officers" and before the comma, put "or employees"; and on line 10, strike out the words "exercising such powers" and add after the word "officers" on line 10, "and employees thereof", so that in this shifting process, it will take along the employees as well as the officers, except they are reduced — except their number is reduced. Why not? Why shouldn't they be protected just as well as the officers?

Mr. Stimson — Is "employees" not a matter of statutory treatment? We are only in the constitution treating of constitutional officers.

Mr. Wagner — Officers of departments are statutory, treated by statute, just as employees are. Now, you are taking care of the officers by the Constitution. Hadn't you better take the employees along with the officers, except that they are reduced in number?

Mr. Stimson — Don't you think, Senator Wagner, that that might interfere with the enforcement of the civil service provisions?

Mr. Wagner — No, I want to protect it; that is just what I want. I don't want, by a shifting process, to have men eliminated

who have taken a civil service examination and are not politicians. I want to have them continued, and not give some excuse that when this department is shifted over as a bureau in some other place, or a department, that new officers are not created in the nature of employees. It can do no harm, it seems to me, and it will do what we intend to do.

Mr. Stimson — It seems to me that this would necessarily freeze into the Constitution a large number of employees whose tenure might be within executive discretion, whose reduction might be within executive discretion. I should think it would embarrass the very purpose which the gentleman has in mind.

Mr. Wagner — I don't, except on the line "Subject to the power of the legislature to reduce the number". Now, I have no objection to reducing the number of employees. That is for economy. But by some legislative scheme to cut out a certain number of employees, and then find afterwards an excuse for re-creating places for others, is a method that has been very successful by the action of past Legislatures. I want to prohibit it here if I can. I think we all want to do that. I think the word "employees" refers practically only to civil service employees. Or if you want to, put in the words "civil service employees". I have no objection.

Mr. Tanner — Well, Mr. Chairman, it seems to me that this convention, without an intimate knowledge of the Civil Service Law, should not attempt to legislate to that extent. That is a matter to be left to the Legislature. It has been the policy of this committee every time a detail could be left to the Legislature, to do so, and I very gravely fear that if you strike out and insert as indicated by the Senator from New York, you would be putting these employees, civil service men, into the Constitution, and never could get them out. I think it is pre-eminently a matter to be left to the Civil Service Commission and the Legislature. I trust the amendment will not be made.

The Chairman — The question is on the amendment offered by Mr. Wagner.

Mr. Wagner — Mr. Chairman, I don't want to subject myself to the steam roller any more than is necessary. I thought I was pointing out something meritorious. I withdraw my amendment.

The Chairman — The amendment is withdrawn. Are there any further amendments to section 2?

Mr. Wickersham — Mr. Chairman, the vote has not been taken on section 2. I move the adoption of section 2 as amended.

The Chairman — The adoption of section 2 as amended is moved. All those in favor will say Aye, contrary No. Carried. The clerk will read section 3.

The Secretary — Section 3. The head of the Department of Justice shall be the Attorney-General. He shall be elected at the same time and for the same term as the Governor.

Mr. C. Nicoll — I offer the following amendment and move its adoption.

The Chairman — Mr. C. Nicoll offers the following amendment which the Clerk will read.

The Secretary — By Mr. C. Nicoll. Section 3, page 3, lines 14 and 15, strike out right after the period following the word Attorney-General, in line 14, and strike out all of line 15.

Mr. C. Nicoll — Mr. Chairman, the purpose of that amendment, and one which I hope to offer on the next section, is to complete the scheme to make the Attorney-General and Comptroller appointed by the Governor instead of elective, as this bill provides. I always take it that the Republican platform means more than the Democratic platform.

Mr. Wagner — Of course you mean something less, don't you, in elective officials particularly?

Mr. C. Nicoll — I mean when the Republican party takes an attitude it always means more than the Democratic party.

Mr. A. E. Smith — Mr. Chairman, will the gentleman follow that out and tell us more of what?

Mr. C. Nicoll — Yes, I will tell you more of what: Greater fulfillment of the party pledges.

Mr. Wagner — Mr. Chairman —

Mr. C. Nicoll — No, I won't yield any more, Mr. Chairman. I am very glad to yield to you on almost any subject —

Mr. Wagner — But not upon this particular subject?

Mr. C. Nicoll — I yield to you with pleasure, but not to the clock. Now this matter of appointment of the Attorney-General and the Comptroller seems to me to be a necessary part and an advisable part of the scheme of government we are going to put in operation. There is no person on whom the Governor must depend to a greater degree for the execution of the laws than on the Attorney-General. He is the legal arm of the Governor. As Ex-President Taft so ably said before our joint committee: "The government is enforcing the law. Why shouldn't the department of justice be under the man who is at the head and responsible for its enforcement? If you want a judge, why make a judge; but if you want a man who is to do things and enforce the law, when the man at the head is charged with the faithful execution of the law or with taking care that the laws are faithfully executed, why shouldn't the man who conducts the prosecution and represents the State from the executive standpoint, be responsible to the man at the head of the State?" I

have been very much interested here to listen to the debate and particularly the arguments the other night of Mr. Quigg and other gentlemen who have spoken here on the iniquity of direct primaries. But what is the iniquity back of the direct primary, and what is the fallacy on which the direct primary rests, and which I believe sooner or later will kill the direct primary? It is that you cannot give effective control to government by complicating the method by which that government is controlled, and both this long ballot which we now have, and the direct primary which we now have, seek to give control of government to the governed by increasing the complexities by which they must exercise their control over it. I don't think effective government can be obtained until you can bring the ballot, both the election ballot and the primary ballot, if we must have one, within the control of the individual voter. It seems to me that a Legislature to enact and a Governor to enforce and execute the laws are the full complement of an effective State administration. The election of numerous officers has not that tendency. It simply takes away from the power of the people's elected Governor to enforce the law. It represents a distrust of the people's intelligence in nominating and selecting their governors, and it represents a distrust of the people and of the Legislature elected by them, which can remove the Governor at any time. I think that rule by the people can be better secured by making these officials in addition to the others recommended by Mr. Tanner's committee appointive. And I ask leave, Mr. Chairman, when the next article is read to present an amendment along the same lines to that also.

Mr. Eisner — Mr. Chairman, I rise to second the amendment which has been offered by Mr. Courtlandt Nicoll, and in so doing I want to make my position perfectly clear in advance, and that is, if this amendment is defeated, and the amendments of Mr. Smith and Mr. Wagner to the different articles go the same way, I shall, in the end, because it is the best thing obtainable, vote for the proposition submitted by the Committee. Mr. Chairman, we have heard a great deal about the party platform. Well, I like to look upon a party platform as one of the elements of a legal contract. It is the offer of a legal contract, to be accepted or rejected by the people. Now, so far as the Democratic Party is concerned, it made its offer to the people, and the offer was rejected. So I don't think, looking at it in that way, that the Democrats are particularly bound to the party platform unless they want to be. So far as the Republican platform is concerned, I think it is a little too vague as a matter of contract, to be specifically enforced. So I believe the Republicans are likewise free to

act in this Convention exactly as they choose. Mr. Chairman, I listened with a great deal of attention and respect to the remarks of Senator Brackett and the President of this Convention. Both took diametrically opposite viewpoints, and both did so, thoroughly convinced that the words which they uttered were the absolute truth. And, between the two, Mr. Chairman, I cannot but conclude that those uttered by the President of the Convention were nearer to the proper theory of the case. If you take the word of him who formerly led the Republican Party, President Taft, you will find that he said, "I have the fullest sympathy with every reform in governmental and election machinery which shall facilitate the expression of the popular will, such as the short ballot and the reduction in elective officers." And the early short ballot, Mr. Chairman, as it is popularly known means the short ballot with the election of two officers only, the Governor and the Lieutenant-Governor. Mr. Roosevelt has this to say: "In the first place, I believe in the short ballot. You cannot get good service from a public servant if you cannot see him, and there is no more effective way of hiding him than by mixing him up with the multitude of others so that they are none of them important enough to catch the eye of the workaday citizen."

If you would listen to what Mr. Brackett tells you, and follow his arguments to their logical conclusion, you will have to decide that the more places that you make elective, the greater the liberty of the people; that if every appointive place that we now have was made elective, so much greater would be the liberty of our citizens. But it is not so. The average citizen is too busy to know all about the candidates that are running, and if you have a multitude of them on the ticket, he is too busy with his everyday affairs to be able to investigate their antecedents. Don't complain about it. The average citizen is not a professional politician; and I make no reflection upon the professional politician. Some of us here, through being interested in politics, and working in politics, do know about the people that are named. I would have no difficulty, and I don't think anybody about this circle would experience the slightest difficulty in telling the antecedents of every man named on the last State ticket, but you would not expect that of a business man. President Wilson in one of his speeches made the statement: "I believe the short ballot is the key to the whole problem of the restoration of popular government in this country," and he further said: "You have given the people of this country so many persons to select for office that they have not time to select them, and have to leave it to professionals, that is to say professional politicians." The long ballot, Mr. Chairman, throws away the liberty which we are

speaking for so loudly about this circle, because you cannot expect a man to choose wisely from a long list of persons with whom he is not in the least familiar. Another thing, Mr. Chairman, I don't deceive myself, and there is no use of any of us deceiving ourselves, that this measure is going to insure positive economy. I don't go that far. I think that is a fallacious argument. They have the short ballot in the State of New Jersey, but they have not learned economy as yet there. They had a commission appointed to see what they could do to consolidate the State departments. That was after the short ballot. And the commission, after employing a firm of certified public accountants, told them what to do. But, so long as you let the Legislature continue to create new commissions, what difference does it make that you consolidate in one or more departments now made in the Constitution? If you want to present the issue fairly to the public of this State, let us do so without concealing or minimizing or in any way distorting the fact. It reminds me of those dangerous forest fires where on the surface of the ground you may see no conflagation at all, but underneath the brush the flames are continually spreading, and just so while your Constitution may have only a few departments mentioned, within those departments, by legislative authority, you may have any number of more expensive and wasteful commissions created. Mr. Chairman, no one has spoken about the relation of the direct primary to the short ballot. Three years ago I stood in these halls exhorting my Democratic friends to carry out what I believed to be the party platform, because then the party platform had been accepted by the people and the contractual relation I spoke of before was effected. If you are going to continue the direct primary, and there has been no attempt, Mr. Chairman, to do anything else with it, no successful attempt, you have got to have a short ballot, because what use is the direct primary without the short ballot? You name one or two offices and these people carry their party primaries and go before the people of the State and if the people disagree with the candidates brought forward by the parties you are apt to find the man who carries the primaries and subsequently carries the election to be entirely fitted to be clothed with the authority he is to be vested with when you enact a short ballot law. Let us not forget one of the principal theories upon which our government is based. If we want administrative officers there can be no wrong in appointing them. The Attorney-General is an administrative officer, the Comptroller is an administrative officer, all these subordinates are purely administrative. But I take it that one of the fundamental theories of our government is that the representative officers should be elected. The

only representative offices we have are our legislators. The only reason we are electing our Governor and our Lieutenant-Governor is that someone must be clothed with the authority to administer at least the highest executive offices of the State, so I do not fear, Mr. Chairman, any of the results that have been pictured in such dire terms by Mr. Brackett; I don't think that any millenium is coming when you enact the short ballot, but I do think that it will be the restoration to the people of the State of the control of their own officers who will not be named, Mr. Chairman, within the confines of the dark cellars but who will be named in broad daylight and whose actions will be carried on and will be scrutinized in the bright daylight and under the blue skies.

Mr. Barnes — I cannot recall that at any time in my life I have ever expressed an opinion upon the subject which is before this Convention except a tacit one as sitting in a Convention. My reason for that has been that from the beginning of the agitation down to the time of this very amendment that we are to vote upon, the first question at issue, I have never been able to discover a principle involved in the matter. If I believed with Senator Brackett that this was to create an autocracy, I would certainly vote in opposition to the measure. I cannot, however, agree with the arguments which have been made in behalf of what is termed the short ballot. All of the arguments which I have heard on that subject are based upon the proposal that the people of this State do not know how to vote and do not know for what they are voting when they do vote. I know of no experience upon which such a supposition can be based. Last fall was the most important trial of that. After having voted since 1895 in a party column, and 90 per cent. or more of the voters used the party column, suddenly and almost without warning we were projected into the Massachusetts ballot, and what was the result of the vote on that? There were 1,486,875 votes cast for Governor, of which 46,000 were blank or void. Now, Mr. Sulzer ran on the American ticket and received 70,000 votes. It is very clear from the number of blanks that occurred for Lieutenant-Governor and for the rest of the officers, that a large number of those who voted for Mr. Sulzer on the American ticket refused to vote for any public officer, as the blanks on the Governor were 32,000, running to 81,000 for Lieutenant-Governor, and I think it may clearly be demonstrated that the American party vote was the reason why there were more blanks for Lieutenant-Governor than there were for Governor.

The result shows that for United States Senator, which was the last of the State officers to be voted for, Mr. Wadsworth received forty-six thousand and odd less votes than did Mr. Whitman, and Mr. Gerard received 30,000 votes more than Mr. Glynn,

indicating that, although 1,300,000 voted for these officers, or very nearly that, there were only ten or fifteen thousand less who voted for the ninth man on the ticket than voted for the two principal candidates. Mr. A. E. Smith made the remark the other day, when the report of the Committee on Future Amendments was under consideration, that the vote for assemblyman was very much less. I find that the vote for assemblyman on the Republican ticket was 643,000 or 4,000 more than for Mr. Wadsworth; and 564,900 for the Democratic Assemblymen, or 23,000 more than for Mr. Glynn. So that, for the two leading parties, from the top of the ballot all the way down to members of the Assembly there was practically not one per cent. loss in the vote, indicating clearly to me that the people of this State were entirely intelligent and that, when they voted the ballot with a single mark, within one year's time, not one per cent. of them failed to mark practically every name on the ticket. I wish to enter my protest against this constant attitude of mind that the voter does not know what he is doing. He does, and he has shown it under any ballot or any system. He can vote a party column ballot, with an exception, if he wishes to elect anybody in particular, just as easy as he can under the Massachusetts ballot. The Massachusetts ballot, of course, has the merit of leading him to discrimination, which, of course, was the purpose of its inauguration. And he so discriminated in this last election that the Republican vote varied from 686,000 down to, I think, 600,000 for one office and the Democratic vote from 505,000 to 575,000, which indicates, of course, what I have just said. Therefore, it seems to me that to discuss this question otherwise than purely from a technical point of view has no meaning. We admit that the Governor should be elected and that he should have an elected successor, in case of his death or disability. The question before the House is on the Attorney-General. The question will shortly come upon the Comptroller. Upon the Secretary of State, upon the Department of Public Works, the classification has been carried, that was the great administrative reform of this bill. It was not the question of who should be elected or who should not be elected. The vote was, upon section 2, unanimous, in this Committee. It appears to me that the only question to be determined by each delegate is how he would vote in relation to the various offices, in accordance with what the administrative functions of those offices are. To my mind, the Attorney-General represents the State as an entity, and therefore he should be elected. I have felt that it would be most unwise if the Comptroller's office should be made appointive. It is traditional in the State. It is looked upon in every state, as Mr. Root said in

relation to the plan of city government, that there should be a financial head who is directly responsible to the voter.

I have very great doubt whether the Secretary of State ought not to be elected. He is the continuing officer of the State. He calls together the various bodies. The Governor himself must swear in before the Secretary of State. As it has been stated right in this bill, I believe, he is made the custodian of the seal of the State. His duties are purely functionary and not of a character which could possibly call down upon him the opprobrium of the voters, as might be the case with the Superintendent of Public Works. There are many men here who believe that the Superintendent of Public Works should be elected, because of the large expenditures over which he has control. I have never been able to comprehend the mental process whereby the grant of the power involves its abuse. It never seemed to me that that was the proper approach to any public question. The Commissioner of Public Works is an officer who is called upon to perform acts that are practically and only of a physical character. They do not touch morals; they do not touch the welfare, in the sense of individual welfare; they do not touch any of the questions in which people become aroused or interested politically. It is a plain business proposition, to do that work well, efficiently and honestly. Now such an official might far better be appointed by the Governor of the State than be elected. It seems to me that it is inherent in his office that a Commissioner of Public Works is the agent of the administration, which will be responsible for him. I am not particular — I do not hold to the Secretary of State necessarily, but I do believe the solving of this question is entirely and simply based upon the particular office. For instance, taking the treasurer's office, it is not important that he should be elected, for the reason that you have established a department of finance, with the Comptroller to be elected, and the feeling of the voters and the desire to operate in public affairs will unquestionably be controlled by and directed particularly to that office.

Mr. J. G. Saxe — I wonder if the delegate knows that, in enunciating the principles he has been enunciating for the last few moments, he has been practically quoting the exact plank of the Short Ballot Association itself?

Mr. Barnes — I have not examined it. I have not read any short ballot literature if I could avoid it.

Mr. J. G. Saxe — The Short Ballot Association throughout the United States makes its first plank that only those officers should be elected who are important enough to attract and deserve public examination.

Mr. Barnes — That is as it seems to me. There isn't anything else in this whole matter. I cannot see anything else in it.

Mr. J. G. Saxe — Neither can I.

Mr. Barnes — I believe the hour of half past five having arrived —

Mr. Wickersham — I hope the rule will not be observed. I hope we may sit later.

Mr. Barnes — Then I will close with the usual remark, that I hope that the amendment proposed by Mr. C. Nicoll will not prevail.

Mr. Brackett — Mr. Chairman, the gentleman who has just spoken must know that the trouble is not that the superintendent of public works will not do the work well, but it is that he will cast his eye always to the Governor and not to the performance of his work.

Mr. Barnes — That I do not believe, Mr. Brackett.

Mr. Brackett — Well, I recommend you to read that passage, I think it is Paul, where it says, advising against marriage, I think it is, that the wife or the husband — I do not know which it is, but it is one or the other—will always attempt to please the other and not to please God, and that is the truth. Whether you believe it or not, it is true. I find myself, Mr. Chairman, distressed beyond measure that the President of this Convention should say that I see nothing wrong in the State government as it has been carried on. Why, Mr. Chairman, I do wish that I could get him to read some old, perhaps obscure Legislative history, with which I am sure he was not familiar, because he was away when it occurred. I believe that the great change that has come over the thought of the people of the State with respect to bosses began with the action of the three insurgent Senators, Brown, Elsberg and myself, in 1904. That insurgency accomplished very little in the Senate but it showed that men could stay in public life in spite of a very merciless boss. The gentleman from New York, Senator Root, may not be disturbed, Mr. Chairman, by anything wrong in the State as it has existed, but I have seen so much that it has disturbed me a great deal, so that I have often felt myself like John the Baptist, "A voice crying in the wilderness." Now, there is this great gulf fixed between the position of the President of the Convention and those of us who oppose this amendment. I never saw it as clearly as I see it now, and it rests right here. The President of the Convention believes in transferring the power of the boss to the Governor. He does not believe in destroying the bosses and placing beyond all possible existence the boss system. He believes in transferring the power from the gentleman who has succeeded Senator Platt to the Governor. I do not believe in the boss system at all and I never did. I hold it to be true, Mr. Chairman, that the fact that

a man is elected Governor of the State to perform certain well-defined and specific duties, does not at all render him the leader of his party or the boss of the members of his party. The very instant that the candidate of a party is elected Governor of the State, that instant he ought to be removed as far as possible from the boss of his party or from the leadership therein. He has become the Governor of the men who are opposed to him just as much as of those who are for him. His oath of office compels him to treat as truly, carry out the laws as faithfully, to be as just to those of the opposite political party, as to his own. And, gentlemen of this Convention, until and unless we get away from the doctrine that the man who is elected Governor is thereby made at once the boss of his party, we have utterly obscured the question and we have kept ourselves from a single step away from bossism, with all its evils and with all its hatefulnesses. I beg you members of this Convention not to give heed to the proposition that the people do not know the minor officers for whom they vote. When, at the end of an active campaign, they come into the booth with full consideration of the situation, I want to say to you that the man in the average country district, as he marks his ballot, knows more of the minor officers for whom he is voting than does the Governor when he comes to make his appointments. Here is precisely where this bill increases an hundred-fold the power of the boss. The Governor is elected. He must fill the offices. If he has not bargained them away before election for the purpose of getting support for his election, what must he do? He decides that he wants to give something to the Bronx, and if he is a Democrat he goes down and consults Boss Haffen, and he has to. He does not know, he has not the intimate knowledge of the man whom he is to appoint or whom he must appoint, that the people in the booth who elected him have. He goes and he sees Boss Haffen in the Bronx. Then he comes up here into the county of Albany and thinks there should be somebody here and he goes to Staley down here on State street, who is the head of the machine; he goes up into Plattsburg. He wants to know the qualifications of some one up there. I am willing to bet a great big, round, red apple that John F. O'Brian will be the man he will go to. He must do it. There is no other way he can get information. He must have the recommendation of the men that know. You have perpetuated and put into the Constitution the very seeds that will grow into the rankest of boss weeds.

I want to say to you, Mr. Chairman, that the appointive system is the life blood of the boss system. The boss does not begin to get his nourishment or his power from the elective officers of the State; it is from the appointments, and you may go through and review the details of the political history of this State for the

last eighteen years in proof of what I say. The body of self-government, Mr. Chairman, is rooted no more in the fact that the Executive is and should be elected than it is in the limitation of his powers after he is elected. It is just as essential to self-government that only limited power should be given an Executive, as it is that he should be elected at all. You may forget this, you may think you are doing something right here to-day, but the time will come when it will plague you beyond description, and the time will come when the members of this Convention will hate to have it remembered that they were members of a convention that turned to this wicked thing.

Mr. Quigg — Mr. Chairman, we have already adopted the proposition that the functions of all these various boards, commissions and officers shall be continued and transferred. When Senator Brackett undertook to insert the provision that the number of officers and employees might be reduced, he was met with something about the Civil Service Commission and we are not going to contemplate the reduction of any employee. We are going to keep the group, just as it is, with more coming in. Now, Mr. Courtlandt Nicoll wants to strike out the sentence, as to the head of the Department of Justice, that he shall be elected at the same time and for the same term as the Governor. I shall vote against him on that, because, seeing that the humor of the Convention is to make this a short ballot bill, and, believing as I do, in surrendering my individual opinion when I see it coming in conflict with the opinion of the majority, I shall vote against him. But he may be consoled for the lack of my support by knowing that he will receive that of the President who is sitting here ready to vote for him, believing as he does in the short ballot, pure and simple; he can be consoled for the lack of my support in the knowledge that he will have that of Mr. Stimson and Mr. Tanner, who, with the President, are believers in the principle of the bill. He will have for his amendment at least their support. Now, of course, I cannot guarantee that. I might guarantee Mr. Ray B. Smith perhaps, if I had a minute or two; I might guarantee Mr. Al Smith. I do not promise to guarantee the President, Mr. Stimson or Mr. Tanner. But if he fails there, Mr. Courtlandt Nicoll will know and be much gratified in the knowledge in that when he renews his motion on the next paragraph, as to the Department of Finance, he is sure of the support of every member of the delegation from Kings county.

Mr. Blauvelt — I would like to address myself for a moment to the mechanics of this bill. It seems to me that there is a great deal of unnecessary language employed in stating the various propositions advanced in the article. I think, if you will look at section 1 of the article, that you might well incorporate in that

all that there is in section 3 — practically all of the sections in which we enumerate the heads of departments. By that I mean, if we were to say, in section 1: "There shall be the following departments in the State government, to wit: a department of justice, the head of which shall be the Attorney-General; of finance, the head of which shall be the comptroller; of the treasury, the head of which"— and so forth on down through, we will save a great deal of language and shorten the mechanical structure of the article. On the question of whether or not the Attorney-General should be elective or appointed, I sincerely hope that the amendment of Mr. Nicoll will not prevail, for the reason that the Attorney-General is not merely an administrative officer. He exercises very proper judicial powers; he is the legal adviser of all the people of the State, and, in a sense, of all the political subdivisions of the State. He advises the heads of the various departments of the State government, and, to that extent, his duties are ministerial. But he also brings actions in the name of the people of the State. He advises the local boards in the various counties, towns and villages of the State, and his decision and opinions in those matters are judicial in nature and have the force and effect of judgments until the courts otherwise provide. I think he is an officer of such supreme importance to the State that he should be elected.

Mr. Sheehan — Mr. Chairman, when we approved the executive budget proposition it was upon the theory that responsibility for State expenditure should be fixed and absolute; that there was to be such concentration of power in the executive that he would have no excuse for shifting or placing responsibility on any other officer. We were told that the budget plan would place responsibility upon one man, and that responsibility for the administrative and financial affairs of the State should rest upon the executive head and should not be divided or delegated. When I suggested the advisability of surrounding the Governor with a body of experienced men to aid in making the administrative budget, we were told that this would divide or shift responsibility. The vice of the present extravagance was traceable, it was said, to a division of responsibility between the Governor, the Comptroller and the Legislature, so it was decided to limit the power of the Legislature and to curtail the power of the Comptroller. The costly administration and the great political machinery of the Comptroller's office were to be destroyed and he was to be an auditor to verify the financial transactions of the State. He was to be shorn of the power theretofore exercised by him in order that the Governor alone should be held responsible for the financial condition of the State. With this thought in mind I was prepared to accept the principle embodied in the original report

of the Committee on Governor and Other State Officers. Anything not fundamentally wrong that stops multiplication of office and reduces State expenditure will receive my support, and in determining that question I do not find it necessary to look to my party or any other party platform for guidance. I do not believe the people are worrying much about the danger that will come from this particular concentration of power. They really care little about the long ballot or the short ballot and they are not much concerned about the possible political ambition of those who are helping to frame this Constitution, but they are in deadly earnest as to the cost of government and the growth of taxation. I have voted in this Convention and in committee to increase salaries of important officials, and it is my belief that the people want their capable and efficient servants well paid; but what they do object to is the constantly swelling horde of men whose support of political organizations is obtained at the expense of the taxpayer. Will the concentration and consolidation of State offices help bring about a decrease in the army of employees? Will this consolidation produce greater efficiency in the public service? Will it make for economy in administration? Will it actually reduce taxation? In my opinion the execution of this plan, if placed in right hands, will be of real benefit to the taxpayers. Those who believe in its efficacy may be disappointed, but we will all have the consolation of knowing that nothing can be worse than the conditions we are trying to improve. I believe the plan of the Committee can be improved upon. The original plan of the Committee to take from the Comptroller the vast financial power now exercised by him was, in my opinion, better than the plan under discussion. The office of Comptroller is a powerful one. He has more control over the financial affairs of the State than all the other officials combined. At the time we adopted the executive budget plan it was understood that the enormous power of the Comptroller was to be taken from him and vested in the Governor; not that the Comptroller was abusing those powers, but because there should be no division of responsibility; because all eyes were to be turned upon the executive, and we were to deprive him of all opportunity of saying: "The fault is not mine, but it rests with the Comptroller." I do not blame the present occupant of the Comptroller's office for trying to hold on to all the power and prestige of his office. That is natural. It is in accord with human nature and with political nature. But what I do object to is that it gives to every weak, timid and cowardly Governor a shield with which to escape the responsibility we are trying to fasten upon him. With the power now vested in the Comptroller, that officer can make it impossible for

any Governor to achieve the results we have a right to expect should follow the adoption of this plan. It has been said that the adoption of the plan will make the Governor an autocrat; that his power will be sufficient to override all opposition; and it must be conceded that we are vesting in one person power never heretofore exercised by any official of the State. But, Mr. Chairman, we must read this measure with the companion measure presented to this Convention by the Committee on Governor and Other State Officers, which recommends a four-year term of office for the Governor and makes him ineligible for succession. I am sorry that measure was not made an integral part of this proposition, but I assume the Committee that recommended its passage will be as active and powerful in favoring its adoption as they are in the matter under discussion. I am sorry the Committee on Governor and Other State Officers did not stand by their original proposition. It may be that the surrender was due to necessity; it may be that the charge is true that the change was due to political expediency; but, in my opinion, the original proposition in its essence could have been carried in this Convention, had the Committee stood by its original decision. In order to fully carry out the reformation aimed at, I believe the Comptroller should be appointed and not elected, for if we are to have an executive budget, let us have it under conditions that will give it a fair trial; and to this end I intend to propose an amendment to section 4 of the printed bill, striking out the words providing for the election of the Comptroller. I have no objection to the election of the Attorney-General. In fact, there is much more reason why the Attorney-General should be an elected officer than that the Comptroller should be chosen by the people. He is made by law the prosecuting officer in criminal matters in place of district attorneys in special cases. It is his duty to prevent violations of law and to expose wrongdoing in the State government wherever found. Let us keep that officer entirely free of official control or interference. He is the legal officer and not a financial officer of the State, and the Governor can shift no responsibility upon his shoulders such as he can do with the occupant of the Comptroller's office. I believe the Governor should have the power to make all these appointments without the approval of the Senate, and that he should have the power of removing those whom he appoints. I should, however, go one step further and provide that all these appointed officers might not only be impeached as is provided for in this measure, but that the Senate, by a two-thirds vote, might remove them upon written charges and after an opportunity of being heard. This method would open a way to get rid of inefficient officials and it would destroy or at least minimize the political activities of officers upon whom

we are going to vest great power. In addition to this we might with great propriety take another step and adopt the suggestion that has been made here that the Senate and Assembly in joint session should choose an officer clothed with the power of visitation and investigation over all State departments. We ought to make the officials of this State feel that they may be called upon at any moment to explain under oath every act involving the spending of public funds, and the officer who is to be charged with such a duty should not owe allegiance to any department over which he has the power of visitation and investigation.

Mr. Tanner — Before this vote is taken, Mr. Chairman, I wish to say that while I agree with Mr. Nicoll, yet the work of the Committee was done after the most painstaking attempt to find the sentiment of this Convention and to ascertain from the platforms of both parties what the people of the State at large felt, and I believe that inasmuch as every delegate here wishes not to impose his ideas on the people, but to ascertain theirs and to put theirs into effect, unless the Committee of the Whole radically disagrees with the conclusions of the Committee which has had this matter in charge so many months, we should stand by the Committee's report as the best expression of opinion that painstaking effort has been able to yield and I trust that Mr. Nicoll's amendment will not prevail. While I agree with it personally, I do not think it is the expression of this Convention or the people and I hope the section will be adopted as reported by the Committee.

Mr. Ostrander — Mr. Chairman, I would like to ask Governor Sheehan a question, whether he believes that taking away the excuse of the weak, cowardly Governor that he describes will make him strong and brave and holy?

Mr. Sheehan — Mr. Chairman, taking away the excuse might even turn a coward into a brave man; taking away the excuse will expose him to the punishment of the people if he does not perform his duty as a brave man should. The office of Governor should never be held by any man who has not some of the qualifications at least that should go with bravery.

The Chairman — The question is on the amendment offered by Mr. Nicoll. All in favor of the amendment offered by Mr. Nicoll will rise. The Clerk will tally. The gentlemen will be seated. Those opposed will rise. It is unnecessary to count. The amendment of Mr. Nicoll is lost.

Mr. Foley — I offer the following amendment.

The Chairman — The Secretary will read the amendment offered by Mr. Foley.

The Secretary — By Mr. Foley: Page 3, line 13, strike out the word "justice" and insert in place thereof the word "law."

Mr. Foley — Mr. Chairman, I hope the delegates will give this change some consideration. I apprehend that the Committee derived the title of "Department of Justice" from the parallel department in the Federal Government. There is no exact parallel. The Department of Justice in the Federal Government is closely connected with the administration of justice in the United States and in the State of New York the Attorney-General has nothing to do with the administration of justice. He is counsel to the various departments; he is prosecuting officer of the State at large; and in many cases, where the District Attorney is barred from action, he acts, and he enforces penalties under various laws, and the title which you have given him is misleading, and it does not carry out, or convey the real purpose and functions, which are conferred under the various acts, the general laws of this State.

Mr. Wickersham — Does he draw a distinction between law and justice?

Mr. Foley — Why certainly. We have our judicial system in this State, Court of Appeals, Supreme Courts and various other courts, and as I say, in the United States, the Attorney-General as head of the Department of Justice has certain supervisory powers over the administration of justice.

Mr. Tanner — If the gentleman wishes to follow exact and technical language why doesn't he call it the Department of Law and Equity?

Mr. Foley — Because the Attorney-General is not an officer of equity. He has no equity powers. If you take the appropriation bill for any year, you will find the government divided into various branches, regulative, legislative and judicial, but it is misleading to say that the Attorney-General has any function at all which deals with justice which is conferred upon the courts, Supreme Courts and the other courts. I hope this amendment will be adopted, that we will not surrender our own names in the State. Personally I would like to see the Attorney-General continued without any reference to the Department of Law or Justice, and I don't like, to say the least, the slavishly copying of federal nomenclature.

The Chairman — The question occurs on the amendment offered by Mr. Foley, substituting the word "law" for the word "justice" in line 13. Those in favor of the amendment offered by Mr. Foley will rise and remain standing until counted. The gentlemen will be seated. Those opposed will rise. The gentlemen will be seated. The Clerk announces the result as Ayes 67, Noes 50. The amendment is therefore carried. The question is now upon the adoption of the section as amended. Are you

ready for the question? All in favor will say Aye, opposed No. The motion is carried, and the section is adopted.

Mr. Wickersham — Mr. Chairman, the hour of five-thirty having arrived, I move that the Committee do now arise and take a recess until eight-thirty p. m.

The Chairman — You have heard the motion that the Committee do now rise and take a recess until 8:30 p. m. All those in favor will say Aye, contrary No. The motion is carried, and the Convention stands in recess until 8:30 p. m. Whereupon at 6 p. m. the Convention recessed until 8:30 p. m. the same day.

AFTER RECESS—8:30 P. M.

(Mr. M. Saxe in the Chair.)

The Chairman — The Committee will come to order. The delegates will kindly take their seats. Those not entitled to the privileges of the floor will kindly retire behind the rail. In view of the number of delegates who desire to speak to the amendments which will be offered to the various sections the Chair requests the delegates to bear with him in the enforcement of the ten minute rule. The Clerk will read the fourth section.

The Secretary — Section 4. The head of the Department of Finance shall be the Comptroller. He shall be elected at the same time and for the same term as the Governor. Excepting the powers of examination and verification of accounts vested in the Department of Accounts, he shall have the present powers and duties of the Comptroller, subject to the authority of the Legislature to increase, modify or diminish the same.

Mr. C. Nicoll — Mr. Chairman, I offer the following amendment.

The Secretary — By Mr. C. Nicoll: Amendment to section 4, page 3, lines 17 and 18. Strike out all after the period following the word " Comptroller " down to and including the period following the word " Governor."

Mr. C. Nicoll — I offer this amendment, the same as that offered this afternoon, to make the Comptroller appointive instead of an elective official. Mr. Barnes this afternoon made a statement that it was a question of the importance of the office, more than all, as to whether they should be elective or appointive. That statement, it seems to me, admirably sums up one part of the argument, but there seems to be another part of the argument, and that is the scheme of government which we are proposing here, a scheme of an executive department with correlated branches underneath it, all responsible to one head, and that head

directly responsible to the people. Now if the Comptroller is appointed he will not be independent of the Governor, of course, but he will be independent of what is probably more important, all outside political pressure. When you narrow down the number of officers to be elected to but two besides the Governor and Lieutenant-Governor, you are enormously enhancing the limelight and the power that those officers will have during their term. When you come to the Comptroller, with the power not only to examine and verify accounts, but with the continued powers of that office as they are at present, you will make an official who will be a powerful official in the government, but still no part of the scheme of the executive department. The statement has been made here so frequently that we who favor these measures think that the people take no interest in these departments, in these other executive officers. Nothing could be farther from the truth. The people do take an interest in these executive officers. But what is that interest? That interest is merely this: That they should fulfill, to the best of their ability and as honestly and efficiently as possible, the duties of their offices, just as we are interested in the Secretary of State of the United States and just as we are interested in the Secretary of the Navy of the United States. Our interest in those officials is merely that they shall follow out a consistent, logical, efficient scheme of developing the foreign relations of the United States and developing the navy of the United States. So far, the people are interested in these departments. Their interest arises from no question of public policy. There is no reason why a man should necessarily be of the same party or of a party different from that of the Comptroller or these other elective officers. The interest in them of the people is that they should be honestly and efficiently administered for the citizens of the State as a whole. This amendment is another effort in that, if adopted, it will perhaps make unnecessary the department of the treasury, which would come under the Comptroller's office; and would make unnecessary, as far as the executive branch of the government is concerned, the Commissioner of Accounts. It would be perfectly possible to provide a commissioner of accounts, elected, as Mr. Smith of New York suggests, by the Legislature, under this theory who would be responsible to the Legislature for carrying out the wishes of the party. It would be the Comptroller, responsible to the Governor, who, as part of his responsibility is obliged to see that the laws are faithfully executed, not only the laws of right and wrong but the laws regarding the expenditure of public money.

Mr. Steinbrink — Mr. Chairman, and gentlemen. The marvelous simplicity, the explicit clarity of the recital by the President of this Convention of the proceedings of the Committee of 31, which drafted the platform relating to the Constitutional Convention, and the subsequent proceedings of the Committee on Resolutions of the Republican Conference in 1914, makes any word or explanation from me a work of supererogation. At Saratoga the sub-committee on the draft of a platform in the matter of Constitutional amendment first submitted to the Committee of 31 a provision as follows: "In order to increase executive efficiency in the State we believe in the systematic application of the short ballot to the State, county and municipal government," and in the Committee of 31, there were those of us who could not subscribe to the principle of this declaration. Some of us believed that the declaration should first be confined to State affairs; and again, while subscribing to the principle of reduction, we were not agreed on the number. When it was suggested, that in that platform we name the officers who were to remain elective, the suggestion was vetoed, and out of that full and free discussion came the declaration which was embodied and which has here been quoted that "We recommend a substantial reduction in the number of elective officials by the application of the principle of the short ballot to the executive officers of the State." When into this record there was read what purported to be my own reply to the inquiry made to me with reference to the short ballot, only a small fraction of my answer was quoted. This is equally true in the answers made by some of my associates. On the principle of a shorter ballot I said: "I do favor the short ballot and was one of those who on the Constitutional Convention committee, appointed by Senator Elihu Root of the Republican Conference, contended for this principle." In the same letter in which I made this reply I set forth that I did not subscribe to a ballot bearing only the names of the Governor and Lieutenant-Governor, and from that position I have not receded. It may be that after a trial of the principle which is about to be adopted, I will see the error of my way and may be won in time to a shorter ballot.

This year in twenty states of this Union the movement for fewer elective officers is being advanced and in 14 of these, wherein 9 Democratic and 5 Republican Governors preside, the gubernatorial messages this year advocated this reform. Here in New York this proposal presents the opportunity for the establishment of order in government out of the numerous units of which it is composed, and in voting in favor of its presentation to the people I am firm in the belief that we are not departing from the other declaration drafted at Saratoga which is that "We believe that

such adequate remedies can be devised without departing from the old time American ideals of representative government, or adopting the methods of direct democracy which the founders of the republic deliberately and wisely rejected, or needlessly sacrificing the protection and safeguards of individual rights upon which the unparalleled progress of the American people has been based." The wit, quibs and gibes which have found lodgment in this record aimed at my associates from the county of Kings are of little or no moment, for I realize the truth of all that quotation which begins:

> " Of all the griefs that harass the distressed,
> Sure the most bitter is a scornful jest."

I will not dignify the delightful humor of our Convention humorists sought to be aimed at us, but this perhaps is the justification for my speaking. With these thoughts and with these convictions, and with the consciousness and satisfaction of performing my duty uninfluenced by any other consideration, I support the proposal of the committee, and oppose the amendment offered by Mr. C. Nicoll, and I hope it may be voted down.

Mr. Eisner — Mr. Chairman, I shall not long burden the patience of the Convention.

The Chairman — The gentleman has ten minutes.

Mr. Eisner — Thank you, Mr. Chairman. Brooklyn seems to be somewhat on trial now that we have reached the subject of the State Comptroller. We have heard a great deal about this circle to-day, about the strongest Republican organization in the State, according to my friend from Western Germany. Brooklyn has a habit of sticking together. I remember last year, Mr. Chairman, as a member of the Assembly, that Brooklyn showed its greatest cohesion. At that time there was pending in this body a set of bills known as Mayor Mitchel's police bills. The main object of these measures was to deprive the police of the City of New York of the right to review, which they had theretofore had. It seems that the mayor must have slighted the strongest republican organization in the State in the dispensation, or dispensing of his patronage. The county of New York, of which Mr Samuel Koenig was the Republican leader, seemed to be getting the lion's share. Now, what did the strongest Republican organization do, with reference to Mayor Mitchel's police bill? They did just about the same as the Brooklyn delegation in the Constitutional Convention — I don't say from the same motives, Mr. Chairman; far be it from me to impugn the motives of any delegate to a Constitutional Convention which has the revising of the fundamental law of the State, but it seems that the Brooklyn delegation of Republicans, in the same way were almost to a man

in opposition to the police bills of Mayor Mitchel. If I recall aright, out of the great number of Republican assemblymen from Kings county last year there were only four who voted for the bill. One is here to-day as a delegate. One is one of the secretaries of the Convention and the others were two rather independent men and the rest among them there must have been ten or more all united against the proposition foisted from Mayor Mitchel here, I don't know for what reason any more than I know the reason of the union of Brooklyn with regard to the State of New York of which we have heard so much the last few days. I understand, Mr. Chairman — with the ten minutes that I have left — that Brooklyn — this is only a rumor that has reached me, I have no foundation for it, as far as facts are concerned, because it is a little premature — but I hear that when the judiciary article is placed in final form, the city court of the City of New York is to have appellate jurisdiction in all the counties except Manhattan and Bronx.

The Chairman — The Chair would call the attention of the gentleman to the rule that he must confine himself to the subject before the house.

Mr. Eisner — Oh, Mr. Chairman, I am very much *ad rem*.

Mr. Wagner — A point of order, Mr. Chairman, the gentleman is talking very germane to the point; you cannot separate the Comptroller's office from the delegates from Brooklyn.

The Chairman — The point of order is not well taken.

Mr. Eisner — That is an indissoluble union, Mr. Chairman, if not Standard Union. Mr. Chairman, just in conclusion let me depart a little from the subject, and I don't think the Chair will have any objection to this diversion if I mention the subject about what the people want. One delegate gets up and says I don't think the people want this; another delegate says I have not heard from my people in favor of this. Mr. Chairman, the people very rarely express their opinion on a measure in advance of its submission to them. I don't think any of us who were here in the Legislature of 1913 heard much from the people on the subject of direct primaries one way or the other. What always happens is that you go to a convention or a meeting. Now, in a meeting you don't find everybody rushing forward with a proposition. You find one man perhaps making a proposition and that is referred to a committee, and the committee gives out a report and that report is read before the convention. That is how every movement is put into motion. The very Short Ballot Association is not to be condemned by the members gathered about here. They represent that motive force, and the result of their activities are laid before either a Constitutional Convention or a State Legislature. I don't know how enthusiastic the 720 Republi-

cans were who gathered at the Waldorf-Astoria. I don't know but what the resolution in favor of the short ballot was just offered up and a quick vote taken upon it before the rest of the delegates to that convention knew what was going on; but this idea, Mr. Chairman, of talking about getting the advance views of a large body of people, and using the failure to obtain those views as an argument against the adoption of a measure is entirely futile.

The Chairman — The gentleman's time is up.

Mr. Bayes — Mr. Chairman and gentlemen of the Committee: I do not wish to annoy my friend, Mr. Eisner, but I would say to him that I am a member of the Committee on Governor and Other State Officers, and I have taken the trouble to go through the files of the proposed amendments submitted to that committee for its consideration. I understand that in respect to the article immediately preceding this one, and in respect to the present article, Mr. Eisner is supporting the principle of the so-called short ballot. Gentlemen, the following proposals were introduced and laid before the Committee: Introductory No. 635, by Mr. Donnelly, a member of the Committee on Governor and Other State Officers and a member of the minority of this Convention. Mr. Donnelly provided for the election of the Governor, Lieutenant-Governor, Attorney-General and Comptroller. With what prophetic vision he foresaw the report of this Committee. Introductory No. 246 by Mr. Berri, providing for the election of the Comptroller and leaving to the Legislature to determine every fourth year whether to elect or appoint the other officers. I might say, gentlemen, that has the merit of treating this proposal as an experiment and proceeding step by step. Introductory No. 125, by Mr. Courtlandt Nicoll, a member of the Committee on Governor and Other State Officers, would cut the ballot to Governor and Lieutenant-Governor only. This proposal was criticised by Senator Brackett for the reason that the Governor might just as well appoint the Lieutenant-Governor. Introductory No. 418, by Mr. Wadsworth, provides for the appointment of the Secretary of State, Comptroller, Treasurer, the Attorney-General and Engineer,— *i. e.*, for the election of the Attorney-General only. Introductory No. 85, by Mr. E. N. Smith, a member of the Committee on Governor and Other State Officers, providing for the election of the Governor, Lieutenant-Governor, Comptroller and Attorney-General, exactly in accord with the proposal of Mr. Donnelly. Introductory No. 172, by Mr. Bernstein, providing that all these officers should be made appointive. This coincides with the amendment proposed by Mr. Courtlandt Nicoll. Introductory No. 179, by Mr. L. M. Martin, providing for the election of the Comptroller and Attorney-General exactly in

accord with Mr. Donnelly and Mr. E. N. Smith. Mr. Deyo, Introductory No. 472, providing for the appointment of all these officers, in accord with Mr. Courtland Nicoll. And now, Mr. Eisner, introductory No. 555, providing for the appointment of all except the Comptroller and the Attorney-General. So, gentlemen, you will observe that the report of the Committee on Governor and Other State Officers was with a great deal of accuracy forshadowed by Mr. Donnelly and Mr. Eisner for the minority, and by Mr. E. N. Smith and Mr. Martin for the majority,

Mr. Eisner — Mr. Chairman, will the gentleman yield, not for a question, but for the purpose of an explanation? You can either yield to me now, or I will wait until you get through.

Mr. Bayes — You wish to make an explanation or ask a question.

Mr. Eisner — I wish to make an explanation and not ask a question.

Mr. Bayes — If you wish to make a statement, you can make it when I get through, can you not?

Mr. Eisner — Yes, I can wait until you finish.

Mr. Bayes — Now, gentlemen, just one word in reference to Senator Brackett. He made a statement the other evening and it appealed to me very strongly, because if it is founded upon fact it should cause us to hesitate. He said we should remember our action was not for the hour, not for the day, not for our generation alone, but for generation to generation, *ad infinitum*. In reply to that, as one of the younger members of this Convention, I would say, if we find this change is not satisfactory, if we find we are going too far, we will insist, and properly, upon a retraction. It is for that reason I have insisted and many delegates in this Convention have insisted that in connection with this proposal we should make provision for more readily amending the Constitution. Instead of making it more difficult, we should make it more easy to amend the fundamental law. One further word by way of explanation. When the majority report came in I reserved the right to object to one or two sections. One of those sections related to public service commissions which has since come up upon the report of the Public Utilities Committee and has been disposed of upon the floor of this Convention. The other related to the question of charities. That has been covered, at least in a measure, by the amendment of my brother Steinbrink. So I have no reason as the matter now stands to offer any objection whatever to the report of the majority. I stand with that report, and I trust that this section, together with the other sections will pass substantially as they are.

Mr. Shipman — I have an amendment which I wish to offer, and which covers practically the same thing as an amendment, as Mr. Nicoll's amendment, and which goes even farther.

The Chairman — Will the gentleman send his amendment to the desk?

Mr. Shipman — Yes. I think that the Comptroller should not only be appointed by the Governor —

The Chairman — The Clerk will read the amendment.

The Secretary — By Mr. Shipman. Page 3, lines 16 to 22. In lieu of section 4 insert the following: "Section 4. The head of the department of finance and taxation shall be the Comptroller, who shall be appointed by the Governor. He shall have the present powers of the Comptroller subject to the authority of the Legislature to increase or modify the same, and shall in addition appoint, subject to the approval by the Governor and the Legislature, a State tax commission or commissioners as may be provided by law."

Mr. Shipman — The great government of the United States which collects over eight hundred million dollars each year, and checks its disbursements confines that duty to one department, that of the treasury. It has the collection of revenues from the tariff, the collection of the internal revenue and the collection of the revenues from the income and corporation tax; a wider field than our Comptroller or tax department can ever exercise. It assesses the values of all imports that are brought into the United States, determines their rate of taxation under the law, and all this is done by one department of government; and this is done in addition to its functions in banking, in the issue of paper currency and the coinage of gold and silver. If the Treasury Department, one single agency of the national government, can do all these things, and exercise these functions, why cannot a single department of the State of New York collect the various revenues that come in, assess and collect the taxes throughout the State? I think it would be a measure for the simplification of our government. It would remove from the separate category and unite in one person, in one department of this government, and I therefore ask that such an amendment be supported by the delegates.

Mr. Tierney — I am opposed to the amendment offered by the delegate, Mr. Courtlandt Nicoll, because it recognizes the pure and simple doctrine of the short ballot. To that I am opposed. To the whole amendment, proposed amendment offered by the Committee on Governor and Other State Officers I may say that I am in accord with the principle involved therein, with the consolidation of departments. I am sorry that that is not separated from the principle, the real principle of the short ballot. I am

sorry that the Committee on Governor and Other State Officers has not the courage of Mr. Courtlandt Nicoll. If the short ballot is right at all, it is right in principle. I was sorry to hear the Chairman of the Committee on Governor and Other State Officers say the other night that this bill represents what the majority of the delegates will support. More than that should be asked from any delegate to this Convention. On other propositions before this Convention, I have urged that only matters of principle be written into the Constitution, and far better would it be if the chairman and the members of that Committee had brought out a proposition that the Governor and Lieutenant-Governor should be elected, and all other officers be appointed. Why did they hesitate? They hesitated, probably, because — I wish to express my views on this particular section, section 4 — the head of the department of finance shall be the Comptroller. Around that section, section 4, Mr. Chairman and gentlemen of the Committee, rages the war about the short ballot. If section 4 read to-day as it read when the proposition first came from the Committee, there would not be any question about the disposition of this amendment, as there is not any to-night. No question about its disposition. Would the members from Brooklyn ten days ago have supported this amendment? Let them answer to their consciences. Incidentally, while we are discussing this question of the short ballot, while we are discussing the question of whether or not the Governor should appoint these officers may I inquire of the Chairman of the Committee on Governor and Other State Officers will he move for consideration General Order No. 26, which says that the term of office of the Governor shall be four years? To my mind it is bad enough to give to the Governor for four years the tremendous power, this enormous power, which we give him when we adopt this proposed constitutional amendment for two years; but do any of us want to hand over to somebody — considering the three or four years just past, shall I say "Irrational Man" — the power to control this State for four years, as he will have the power under this amendment? May I inquire again from the Chairman of the Committee on Governor and Other State Officers, will he move General Order No. 26? Will we elect a man for four years who shall absolutely dictate the policy of this State without regard to the will of the people? And I say that advisedly, because as Mr. Smith from New York said the other day, you give to me the power to name this officer who shall be the superintendent of public works for four years, and I will have every county delegation in the State come to me, or I will send for them. I hope before this Convention passes upon this proposed amendment, that they consider with it General

Order No. 26, and ask themselves, each delegate ask himself, does he want to hand over to one officer for four years the power which we give under this proposed amendment

Mr. Unger — Mr. Chairman, I desire to say a few words anent the proposal of Mr. Courtlandt Nicoll. To my mind he has donned the mantle of Alexander Hamilton. He has got the true federalist idea. The only error that he makes, though, is that he stops short of appointing the Governor and Lieutenant-Governor. Why should they be elected by the people? What right have the people got to butt into State government? The whole theory of this discussion is that the ordinary man has not brains enough to determine who he wants to rule, and it should be left to the choice of a clique of highly-trained corporation lawyers, specialists in this sort of thing, to choose the rulers. Let us take this very Convention, for example. The good Lord has blessed me with a saving sense of humor. One hundred and sixty-five delegates, by right of popular vote, are seriously debating a proposal to deprive the people of the right to choose their own State officers. Now just imagine! Would appointive representatives do that sort of thing? Of course not. Perish the thought! Like those stalwart champions of an untrammeled representative government who have spoken so vehemently for this bill, to preserve inviolate the rights of the people, and to end invisible government — oh, so hateful to them! — an appointive Constitutional Convention would enact this measure even without debate. You know, the right thing to do would be to let the President of the United States appoint the Governor and the Lieutenant-Governor, or, if the President of the United States happened to be a Democrat, let the Chairman of the Republican State Committee select them. There is centralization of responsibility for you, if you want it. If you are going to short-ballotize, do it right. Don't do it half way. But, seriously, it is high time to end this farce. To hear vested interests eloquently exhort free citizens to surrender their rights of franchise is an affront to the intelligent body gathered here. Let us be courageous. Remember the fable of the sheep in wolf's clothing. When you hear those who have always been the enemies of the people tearfully and prayerfully urging that their rights shall be forever unimpaired; when you hear the lords of invisible government denouncing invisible government; when those who are the bosses of political parties raise their voices against bossism, think of the old line in Shakespeare: "Methinks the lady doth protest too much." Let us defeat this un-American plan of centralization of power in those who hope to rule, not by popular will, but by Divine Right.

Mr. Bernstein — This discussion has assumed a levity that, in my judgment, it does not deserve. There has never been a more

important question before a Constitutional Convention representing the sovereign people than the question that has been under discussion for the past two or three days. The question of centralization of responsibility is not a question upon which there can be any two opinions. Even the extreme opponents of this measure must admit, if they care to be sincere, that centralization of responsibility is a principle in government that should be sought after. We find centralization of responsibility in our large business corporations and in our large business ventures, working satisfactorily. Why should the government be treated any differently from any of these large corporations? These gentlemen recognize that the principle of centralization of responsibility is a good principle, and they attack it from its flank. They say that, in order to procure centralization of responsibility in government, you must destroy the principle of the rule of the people. Mr. Chairman, that is a mistaken assumption. It is an assumption that the Governor of the State of New York is not responsible or responsive to or representative of the people of the State.

I submit that the Governor is as much the representative of the people as any man who sits in the Assembly or in the Senate of the State of New York. I maintain that the Governor is selected with a great deal more care and with a great deal more discrimination than any other official, or even than all the other officials put together. Is it not a fact of common knowledge that, while the people at large, engaged as they are in the business of attending to their own affairs, pay little or no attention to the personality, the character and fitness of their minor officers, not even knowing their means and certainly not knowing their qualifications — is it not also a fact that there is not a man, woman or child who does know the qualifications and fitness and character of a man who asks for support for the office of Governor of the State? A man usually arrives at a nomination to the office of Governor after having passed through various official positions, after having been before the public perhaps a quarter of a century. His character is analyzed; his qualifications are discussed in the public press and on the platform. Everybody knows what he is voting for and whom he is voting for. Don't you think that a man usually who is nominated and elected as Governor of the State of New York reaches that high, pivotal position in this State much more carefully selected than a man who possibly could be elected as Comptroller, as Attorney-General or as any of the other officers of the State? Mr. Chairman, I believe in the principle of the short ballot, and I believe in it in the simonpure fashion of my friend, Mr. Courtland Nicoll, and not as some of the other gentlemen who facetiously have seen fit to agree with

the principle of the short ballot here. In other words, I believe in the election only of the Governor and the Lieutenant-Governor, and in the appointment of all the other officials in the interest of centralized responsibility. But believing that, I still recognize the fact that this is a Convention where the minds of men differ; that we represent in a smaller degree the larger body of people of the State. I realize that while some of us believe that while only the Governor and Lieutenant-Governor should be elected still others believe that the Comptroller and the Attorney-General should also be elected and still others believe that we should have a ballot eight feet long. It is in the interest of a compromise that this committee has reported the measure in the form it has reported it, and I say, sir, that it is as important to stand for a principle and compromise so as to work out that principle effectively as it is to maintain a strict standard and say we will either have this or nothing else. We all realize, Mr. Chairman, that a radical Constitution will not be accepted by the people of the State of New York. We also realize that a conservative Constitution will be no more acceptable. Why not let us work out a principle of compromise by which we can gain the support of the fair-minded men amongst the radicals and the honest-minded men amongst the conservatives so that we can enact a Constitution that will be acceptable and that will benefit the people of the State? I favor the report of the Committee.

The Chairman — The gentleman's time has expired. Are there any others to be heard?

Mr. Wagner — I offer the following amendment, Mr. Chairman.

The Chairman — Mr. Wagner offers an amendment which the Clerk will read.

The Secretary — By Mr. Wagner. Page 3, line 22, after the period, add "the legislature shall not diminish the power of the comptroller to state, audit or settle all accounts owed to or by the state."

Mr. Wagner — Mr. Chairman, I take it that the Committee will make no objection to this amendment. It was practically the proposition reported by the Committee in its first report giving the power to the Comptroller to audit all claims by or against the State, and I simply want to preserve that power in the Comptroller so that the Legislature shall never be able to either modify it or diminish it.

Mr. Tanner — Well, Mr. Chairman, if the gentleman wishes an answer to that, I don't know whether now or later, I think it is entirely improper to put the Legislature in a straightjacket for twenty years and the Committee does object to the amendment.

Mr. Wagner — Well, you are putting, Mr. Chairman, the Legislature into a straightjacket so far as these different departments are concerned, although the heads of these departments are appointive officials. Now it is conceded here that the Comptroller should be an elective and independent officer, because he is to exercise these powers which I propose the Legislature will never be permitted to take away from him. Now if the Legislature had some time or other transferred those powers to another department then the argument in favor of an elective Comptroller ceases to exist, and you might just as well make the office an appointive office. Now, I can see a situation, and it was vividly called to my attention in the last session of the Legislature, where it was desired to transfer certain of the Comptroller's powers to the Executive Department so as to that extent to minimize the importance and weaken the influence of the Comptroller's office and in favor of the executive. And I called attention then and this is part of the same argument that we hear around here, that it is a movement first to centralize all power into one man's hands and then the next move not only to check all the executive functions and conform and put them into the hands of this one man, but as Mr. Stimson admitted that he was in sympathy with the movement, to then take the judiciary and put that too into the hands of this one individual. I am still a young man, but I hope that I will never see the day when the power of selecting the men to administer the justice of this State will be put as an appointive power into the hands of any one man, and so I want to preserve to this important function, and it is as important as any function of State government, namely, to hold the money and treasury of the State intact, and that no money can be paid out of that treasury except upon the consent of this particular elective official.

Mr. Bunce — If you were to strike out " diminished " from the 22d line, would it not accomplish the same result you are after?

Mr. Wagner — Yes.

Mr. Bunce — Well, that would be better.

Mr. Wagner — I did not want to go so far as to prohibit the Legislature from transferring some other functions which the Comptroller now exercises to some other department if at some future time they deem fit and proper, but this is the one function which makes it necessary and proper that we should make the Comptroller's office elective; and yet you provide that the Legislature may deprive him of that one function after the people of the State have elected the official for the purpose of exercising that particular power.

Now, perhaps, I am trespassing upon dangerous ground here. I am, too, a party to — I am one of those who have heard rumors

and sufficiently authentic to convict the ordinary delegate upon circumstantial evidence, that this provision — and I know this may be annoying, but the truth will out anyway — that this particular section, as it is now, in Section 4, is the result of a complete understanding and that it shall not be in any way changed. I say I do not want to interfere with any such agreement if it has been made. But I do not want my good friends from Brooklyn, if rumor be true, I do not want to have the distinguished gentlemen who made the trade — if it be a trade — handed a lemon, because when they have all this power and all this patronage which we hear about to-day, in the Comptroller's office next year, if that strong Republican organization be not so well represented in the Legislature there may be a movement to take this power which now you think you have absolutely secure away from you and then see how disappointed you will be, and in order that that bargain may be a fitting one, I suggest that this amendment be made.

Mr. Bunce — Mr. Chairman, I offer the following Proposed Amendment.

The Chairman — Mr. Bunce offers a Proposed Amendment which the Clerk will read.

The Secretary — By Mr. Bunce. Page 3, line 22, strike out the word " diminish ".

Mr. Bunce — Mr. Chairman, so far as the amendment offered by Delegate Wagner is concerned, the amendment that he offers, if adopted and placed in our Constitution, would give the Comptroller the auditing of any account against the State, even an account for damages along the barge canal.

Mr. Doughty — Mr. Chairman, you will please take notice that there is dissension in the ranks of Kings county. I find I cannot support this section in its present form. I have for years had a strong aversion to the use of the two words " the same " in this connection and I think we ought to strike them out and put in the word " then ", using the pronoun. But aside from this objection I can very heartily support this section, my main reason being that in the form in which it first came to us it was objectionable on the principle that if we are to have an elective officer he should not be elected to an empty office. He should have at least enough dignity, enough power and responsibility to dignify the votes that may have been cast for him, and that is the reason why the former proposal was objectionable and why this present one is not, because the other furnished too meagre a reason for making him an elective officer. So, with that single objection of those two words, I very heartily support this measure.

Mr. A. E. Smith — I hope that the Convention will not adopt the amendment proposed by Mr. Bunce because I hope to see the day and I think we all hope for it when in the proper assignment of the duties of the different State officials, there will be taken from the Comptroller duties that he now enjoys or power that he now enjoys, that should never have been vested with the Comptroller. Now, the Comptroller's office in this State is a growth. Every time a new project was suggested, and the argument of economy prevailed against the proposal to create a new commission or a new department of government for the transaction of that particular business, somebody always asked the question: "Where will we put it?", and the answer invariably came back, "Give it to the Comptroller." Now, in that way, the Comptroller has had vested in him by statutory law powers and duties that were never intended for an auditor. Nobody ever intended that he should supervise the collection of tax on all the private detectives of the State. That is not the duty of an auditing officer, and to give him a lump sum appropriation in the peculiar manner that he gets that one for the payment of an agent or agents and for their necessary expenses, in the enforcement of Article VII of chapter 25 of the laws of 1909, being the general business law — $6,000. Now, I noticed quite a thrill went around the chamber a moment ago. Everybody was excited. They thought there was a break in the solid Brooklyn delegation, but it was suddenly put to sleep when our distinguished friend just pulled a kind of Webster objection to it. He wanted a "them" instead of "the same". Now, I just want to say this to the Committee on State Officers: You started out right. You were on the right track. What happened to you? You attempted to compromise on a principle and forthwith you went right on the rocks. It will only be by the force of numbers and by the power of coercion that you will be able to sustain your position. When you wrote your first report you said that the Comptroller under the proposed plan should represent the State and see to it that the revenues of the State are expended in accordance with the intent of the Legislature; that all safeguards and limitations prescribed by law are observed, etc. "It is manifest that the officer who performs these functions should not himself be an executive officer collecting"— notice what you said, you said "collecting"—"and expending the funds of the State." That is when you were right. That is where nobody could have found any fault with your proposal except the men that desired to keep up the long and unbroken record of being able to bring back to Brooklyn the bacon. In unity there is strength! The great rope is not stronger than a single strand! They just stood together and they put one over on the Committee on State Officers. They have put you in the ridiculous

position of continuing the Comptroller, with duties that are at variance with each other in principle, and they have made you include the treasurer, with nothing for him to do. There is not a man around the circle attempting to defend the action of that committee that can point to anything they are ever going to give the Treasurer to do, although they provide that he must exist. To the Brooklyn delegation let me say this, that Parmalee Jones, Hungry Joe or any of the old-time gold-brick operators, not even Grand Central Pete, the man that in his day shone above them all because of his ability, had anything at all on this committee when they handed you men this article. Just let me show you what you have. They handed you this: "The head of the department of finance shall be the Comptroller." Nothing extraordinary about that. Now they start in excepting him from something right away. The first power that he gets is an exception. "Excepting the powers of examination and verification of accounts vested in the department of accounts, he shall have the present powers and duties of the Comptroller," until the Legislature says otherwise. Now, every little official that is mentioned in here has something that the Legislature cannot take away from him, except the great elected Comptroller. Over on the next page, you never can take anything away from the superintendent of public works that you give him in the Constitution; you never can take it away from the head of the health department; you cannot even take a little branch of the supervision of agriculture away from the commissioner of agriculture. He has that by the Constitution. The superintendent of banks is left intact. Insurance, the department of charities that is to have supervision of the hospitals for the insane and the prisons — but the Comptroller has his, whatever it is, until it is taken away. Brooklyn, that is all you are saving. The thing to do here is to make the Comptroller's office what you intended to make it. Take a chance. You are taking a long chance with this article anyway. Be right with it. Get it right. Put it the way you had it at first, and appeal to the intelligence of this Convention to pass it for you, and I think it will pass it, and you will not have to compromise and you will not leave yourselves in the ridiculous position that you are in, of maintaining a State elective officer with really no Constitutional powers, and keeping a treasurer with nothing at all for him to do.

Mr. Austin — I realize this debate has proceeded to a point where most of the delegates feel, as do I, that any man who gets up to speak on it ought to be received with a shower of Irish confetti, which is commonly known as a flock of brick-bats. I also realize further that I ought not to say anything about it, because I know, after listening to most of the remarks that have been

delivered here to-night, that I am one of the very few in the Convention that really know anything about it. That seems to be a disqualification for speaking about the section relating to the Comptroller. Nevertheless, I am going to say a word. Referring to the gold brick which Mr. Smith says has been handed to the Brooklyn delegation. I wish to point out to him and to the members of this Committee that the Comptroller has, by the terms of this provision, all that he has had ever since the office has been a constitutional office, and no Legislature has ever attempted to take away from that office any of its powers. There is no danger whatever in leaving the Legislature to deal with this office as it shall see fit in the future because, as long as it shall deserve preservation, as it has deserved preservation, it will be continued as it now is. Now the opponents of this measure, gentlemen, almost all of whom concede that the change made by the Committee was a proper one, seem to be unable to conceive that anything but sinister motives were behind the change. They apparently cannot conceive that anybody would do the right thing from a right motive. I was one of those most insistent upon changing the original report of the Committee so that the powers of the Comptroller would be left as they are now. I am not a member of the Committee, I am not a delegate from Brooklyn, but when I saw the original report of the Committee I was from Missouri. I wanted to be shown, and I worked as hard as anybody in this Convention to secure a change in the report. It was not, gentlemen, from a desire for patronage, but simply from a knowledge of the situation gained through a ten years' experience in that office myself, for six years of which I was chief of the finance bureau, that I felt that the office should be preserved in its present integrity, and I feel so now, Mr. Chairman, very, very earnestly. How many of the members of this Committee know anything about the rule of the Comptroller's office and the rule of its relation with the treasurer's office which Mr. Smith says is useless, but which I say is most useful exactly as it is now conducted. I cannot go at length into the history of the office which was formed in 1797, but I may say that one of the reasons why I favored the change was that it was originally created because of the failure of exactly the scheme first provided by the Committee's report, which was a separate auditing official and a separate disbursing and receiving office. It was created as an experimental office. It was only to exist for three years, and was continued for three years by subsequent acts of the Legislature until finally in 1846 it was made a permanent office and put in the Constitution. It is no disparagement, Mr. Chairman, to the Governors of this State to say that the men who have occupied the office of Comptroller have compared very favorably with those

who have occupied the office of Governor. From its incumbents have been chosen a President and a Vice-President of the United States, five Governors of the State of New York, two United States Senators, two Chief Justices of the Court of Appeals of this State, and last, but not least, a delegate to this Convention, Mr. Wadsworth. It has had a long and honorable record, and it is because the people have confidence in the office, because of what I know of the work which it has done, that I was insistent for having a change made in the original committee report. I will not enumerate the various activities of the office, well as I know them, but there are only a few, I may say, such as the private detective bureau to which Mr. Smith refers that are not absolutely pertinent to this office. I cannot in my limited time review them, but I can point to this fact, gentlemen, I can point to this fact as evidencing why we should retain a separate disbursing officer as a State Treasurer, and that is, if you gentlemen will examine the record of the State finances, you will find that ever since the creation of the Comptroller as a separate office, and of his cooperation with the Treasurer in the payment of accounts in the same manner that now takes place, there has never been a defalcation in the moneys of the State, with one slight exception, 102 years ago, during the regime of Elisha Jenkins as Comptroller, and which, by reason of this double check system, was discovered almost immediately. The double check is why we should have the State Treasurer. How many of you know how the scheme works that the receipt, every receipt, for instance, by the State Treasurer, must be countersigned by the Comptroller, entered upon the books of the Comptroller. The tax account, the accounts of the various departments, are all entered in the office of the Comptroller, and corresponding accounts are kept in the office of the Treasurer. The checks must be signed by both. The system had worked out to such perfection that I assure you, gentlemen, that no stealing of the State moneys could take effect without the cooperation of at least a dozen employees, seven or eight in the Comptroller's office, and four or five in the State Treasurer's office. Now, it is true —

The Chairman — The gentleman's time is up.

Mr. Austin — May I just finish one sentence, Mr. Chairman? It is true, Mr. Chairman, that the Treasurer's office does not cost the State a lot of money. It only costs thirty, forty, or fifty thousand dollars a year, to its great credit, but that is not because its functions are not important. It is simply because it does not cost a great deal of money to exercise those functions, and I assure you that you cannot make a greater mistake, and you cannot open the door wider to stealing of the State's money, than

you can by abolishing the separate office of Treasurer of the State of New York.

Mr. Tanner — Mr. Chairman, I shall beg the indulgence of the Convention for a few moments again, a thing which I had not expected to do; but there sit around this circle to-night many men who, when the debate was opened last Friday, did not know the reason for making the disposition of the Comptroller's office as it is in the bill to-night. I know there are a great many men whose long experience in politics and in the halls of the Legislature have made them suspicious of every motive that crept into the human brain. I am not going to stand here and allow a committee of seventeen men who have done as hard work as any seventeen men in this Convention, to stand the insinuations that has been hurled at them for three days. The other afternoon I read to you gentlemen a letter from Senator Wadsworth, a man who, I then stated, is in as perfect touch with the sentiments of the State as any man that I knew; and I am going to read a paragraph from that letter to you gentlemen who were not present on that day. Our original report, which you gentlemen now praise so highly, and which you were squirming around trying to escape from voting for, was sent to Senator Wadsworth on the 11th day of August, and on the 14th I got this letter. "I used to be pretty fairly familiar with the Comptroller's office and as a result I have always regarded that Department as one of the most successfully managed, and one of the most efficient Departments in the State. Viewed over a period of years, I think it must be admitted that the Comptroller's office has been comparatively free from failures and shortcomings. The Comptroller has been, generally speaking, independent, courageous and efficient. I have never thought it necessary to make any material change in the functions of the Comptroller. It may, or it may not seem important, but I might remark that by leaving the Comptroller's office practically as it is to-day, you will avoid the creation of another State Department. With what information I have I am certain that you will not gain anything in general efficiency by this proposed treatment of the Comptroller's office and I imagine that the general supervision of the financial affairs of the State will cost more under the proposed scheme than under the present one." And you know, Al Smith, that your friend Jim Wadsworth never made that change because of a trade with Brooklyn; and you know that there are a lot of honorable men in this Convention who never made that change for the same reason. We have not disturbed an office that has had a great record for 118 years, and we changed that office back to where it was, and you gentlemen have got to vote for it to redeem your party pledge. There was a great deal of uneasiness over Sunday as to what

some of you gentlemen were going to do. You had to go down to New York to find out, and don't you tell me that I obeyed the behest of fourteen men from Brooklyn. This article is right. It does not have to have the surreptitious amendments that have been fired at it. I ask you gentlemen to take the work of the committee as the work of honorable men who have been trying to submit something worthy of your consideration.

Mr. Wickersham — One moment, Mr. Quigg, if you please. The hour is such, and we have made such progress that I move that we do now rise, report progress, ask leave to continue our session until 11:30, for final vote on this measure, to be taken not later than 11:30. All speeches after ten o'clock to be limited to five minutes each.

Mr. A. E. Smith — One minute, Mr. Chairman. That is pinning us down pretty close, an hour and a half for the final vote.

Mr. Wickersham — Under the rule which the Convention has adopted, the final vote on this measure must be taken at ten o'clock. If the gentlemen do not wish to have any additional time, I will withdraw my motion and we will abide by the rule which has been adopted by the house.

Mr. A. E. Smith — Well, if the gentleman withdraws that I should move that the committee rise, report progress, and ask leave to sit until twelve o'clock, or throughout to-night, until we finish it — throughout the night. I can very readily see that from the heated remarks of my good friend, he has an entire misunderstanding of the minority attitude to this bill. We are attempting to help it. He cannot seem to see it. You must not be too thin skinned about it.

Mr. Wickersham — I know it is right to dissemble your love. "But why do you kick us downstairs"?

Mr. A. E. Smith — You must not be too thin skinned about these things. We men of legislative experience do not hesitate to call a spade a spade. When we make a deal for votes, we admit it.

Mr. Barnes — What is the question before the house?

A Delegate — Mr. Wickersham withdrew his motion, because it was opposed by Mr. Smith.

Mr. A. E. Smith — You want to put a time limit on the discussion of this measure and here we are only at Section 4. We haven't struck the important parts of the bill. I move the committee rise, report progress, and ask leave to sit through the night.

Mr. Wickersham — Mr. Chairman, I hope that motion will not prevail. It is an unreasonable motion. We have been three days debating this measure. If we are only at the 4th section, it is not the fault of those promoting the bill.

Mr. A. E. Smith — I amend it to make it read one o'clock.

Mr. Brackett — I move to amend the motion of Mr. Smith by striking out all after the words "sit again." I think that is about as much as we can do. There is not anything to be gained by working the old horse over hours, you know. We want to work the next day. I will be glad to sit here until 11 o'clock, but later than that there is no sense in holding the committee in session to do any work. If you gain one hour here, you lose two to-morrow. You might just as well recognize it. As an amendment — I will phrase it this way — that the committee rise, report progress, and ask leave to sit until 11 o'clock without saying anything further about the vote.

Mr. Wickersham — I hope that motion will not prevail.

Mr. Stowell — May I ask the leader of this house why he does not want that motion to prevail?

Mr. Wickersham — Because I think it is an unreasonable motion. Well, I offered a motion which was objected to by the leader of the minority. Therefore I withdrew it. He introduced another proposal and Mr. Brackett had moved to amend that. Now, if it is the desire of the members I am prepared to move as I originally did that we arise and report progress and ask leave to sit again, the final vote on the measure to be taken at 11:30, all speeches after 10 o'clock to be limited to five minutes each. That seems to me to be a reasonable suggestion, in view of the prolonged discussion we have had on this measure.

Mr. Schurman — It seems to me, Mr. Wickersham, as there is a good deal of difference of opinion there should be time to go carefully over the details. The difference between your motion and the last motion made by Mr. Smith is not great. I would like to ask you whether as a compromise you cannot make it 12 o'clock.

Mr. Wickersham — If it is the wish of the body, of course. Wishing to interpret the wish of the body —

Mr. Schurman — With your five minute limitation.

Mr. Wickersham — It does seem to me in view of the prolonged discussion we have had, the wide range it has taken, we ought to get to the end of the bill at 11:30. If 12 o'clock is more agreeable to the body, we will make it 12 o'clock.

Mr. Schurman — With your five minute limitation.

Mr. Wickersham — The only way to get an interpretation of that wish is to put the motion as suggested.

Mr. Brackett — Question on my amendment.

Mr. Wickersham — I will make the motion — Mr. Smith withdraws his — I move the Committee do now rise, report progress, ask leave to continue its sessions, speeches after it resumes its

session to be limited to five minutes each and the final vote on the measure to be taken not later than 12 o'clock.

Mr. Brackett — I move to amend that motion by moving the Committee rise now, report progress, and ask leave to sit again until exactly 11:30 o'clock.

The Chairman — A division is called for. All those in favor of the amendment of Mr. Brackett will rise and remain standing until counted.

Gentlemen, be seated. Those opposed will rise. Gentlemen will be seated. The Secretary informs me that the result is 51 in favor and 95 against.

Mr. Wickersham — I renew my motion.

Mr. C. A. Webber — I move to strike out the provision of limitation to five minutes. It is absolutely impossible for any one to present an opposition to any one of these articles in five minutes.

The Chairman — Mr. Webber moved to amend General Wickersham's motion by striking out the five minute limitation. The question is on the amendment of Mr. Webber. All in favor will say Aye, opposed No. It is lost. The question now recurs upon the motion of Mr. Wickersham. All in favor will say Aye, opposed No. The motion is carried. (The President resumed the Chair.)

The President — The Convention will come to order.

Mr. M. Saxe — The Committee of the Whole having had under consideration General Order No. 59, has considered Sections 2 and 3 thereof, made some amendments and adopted said sections as amended; as to the remaining sections, the Committee reports progress and asks leave to sit again; that it be authorized to continue its consideration of the general order in special order this evening, speeches of the members to be limited to five minutes each, and the final vote to be taken not later than twelve o'clock.

The President — All in favor of granting the leave will say Aye, contrary No. The leave is granted.

Mr. Wickersham — I move the adoption of the resolution fixing the time within which the vote shall be taken and the limitation of speeches as recommended by the Committee of the Whole.

The President — All in favor of adopting the resolution will say Aye, contrary No. The resolution is agreed to. The Convention will return to the Committee of the Whole for the consideration of the special order of the day, and Mr. Martin Saxe will please resume the Chair. (Mr. M. Saxe resumes the Chair.)

The Chairman — The Committee will be in order.

Mr. Buxbaum — I desire to supplement the remarks made by the Chairman of the Committee on Governor and Other State

Officers, Mr. Tanner, concerning this particular section of the article. Mr. Tanner read to you from a letter sent to him during the month of August this year, concerning this proposition, by Senator Wadsworth. I desire to read you from the letter sent by me to the Short Ballot Association in 1914, to correct what appeared in the Record here the other night as an authentic statement made by one of the opponents of the short ballot proposition and stating what he believed to be or what purported to be — and stating what he believed to be or purported to be the attitude of the Brooklyn Republican delegates in the Convention on this proposition. I was reported as having replied to a general question of whether I was in favor of the short ballot, that I am, and I reiterate that; but the question was asked in this form: Do you favor the general principle of the short ballot as defined by the National Short Ballot Organization? I was then required to point out the New York State officers that I would desire to have elected and those I thought should be appointed, and in my letter dated October 19, 1914, to the several civic organizations who desired my opinion upon the proposition, I stated that I was in favor of electing the Comptroller. I trust this section will prevail. I trust that the article reported by this Committee will be adopted. In voting for this article I shall only carry into practice the convictions which I have had in 1914, long before the present Comptroller was elected and before I knew he was to be elected. These rumors referred to have no justification in fact. They are the result, or rather they express the wish rather than a statement of fact. I do not know of any conference between the Committee on Governor and Other State Officers, or any conference between the Brooklyn delegates and any one else, and these references and remarks made upon this floor ever since Brother Quigg started the discussion have been unfounded. I desire to have that appear in the Record. The proposed amendment, so far as it affects the State Comptroller and the retention of the elective office of State Comptroller is founded upon good policy, good judgment and I trust will be continued.

The Chairman — The question on Section 4 is called for. The amendment offered by Mr. C. Nicoll, I think, is the first. The clerk will read.

Mr. Wickersham — Mr. Chairman, I ask that the sergeant-at-arms be instructed to request the delegates to come into the chamber before we take the vote.

The Chairman — The sergeant-at-arms will request the delegates to come in from the lobby.

Mr. Quigg — Mr. Chairman, I don't know by what right any

member of the Convention, not disputing the presence of a quorum, can request any other member to be present.

Mr. Wickersham — Any member may request the Chair to have the members informed —

Mr. Quigg — I think not, not without a quorum. Unless you challenge the presence of a quorum.

Mr. Wickersham — Point of order, there is nothing before the house.

Mr. Quigg — I make it a point of order, and my point of order is that the presence of a quorum not being challenged, no member has the right to challenge the absence of another member.

The Chairman — The mere notice to a member is an act of courtesy on the part of a delegate, and the members are not demanded, as I understand it, merely a courteous notice that we are about to proceed to a vote.

Mr. Quigg — All right, all right.

The Chairman — Are you ready for the question? The clerk will read the amendment offered by Mr. C. Nicoll.

The Secretary — Page 3, lines 17 and 18, strike out all after the period following the word "Comptroller" down to and including the period following the word "Governor".

The Chairman — Are you ready for the question? All in favor will say Aye, contrary, No. It appears to be lost and is lost. The next amendment is that of Mr. Shipman. The clerk will read.

The Secretary — In lieu of section 4, page 3, lines 16 to 22, insert the following: "Section 4. The head of the Department of Finance and Taxation shall be the Comptroller. He shall be appointed by the Governor. He shall have the present powers of the Comptroller, subject to the authority of the Legislature to increase or modify the same, and shall in addition appoint, subject to approval by the Governor and the Legislature, a State tax commissioner or commissioners as may be provided by law." Strike out section 7, lines 3 and 4, on page 4.

The Chairman — A division is called for. All in favor of the amendment offered by Mr. Shipman will rise and remain standing until counted. Those opposed will rise. It appears to be unnecessary to count. The amendment is lost. The next amendment is that of Mr. Wagner. The Clerk will read.

The Secretary — Page 3, line 22, add after the period the following: "The Legislature shall not diminish the power of the Comptroller to state, audit or settle all accounts owed to or by the State."

The Chairman — Are you ready for the question?

A Delegate — Division.

The Chairman — A division is called for. All in favor of the amendment offered by Mr. Wagner will please rise. Those opposed will please rise. For the amendment, 27; against amendment, 75. The amendment is lost. The next amendment is that of Mr. Bunce. The clerk will read.

The Secretary — Page 3, line 21, strike out the comma and insert the word "or"; also strike out the word "or" at the end of the line. Page 3, line 22, strike out the word "diminish".

Mr. Bunce — Mr. Chairman, I would like to ask the Chairman of the Committee on Governor and Other State Officers if he will accept the amendment?

Mr. Tanner — I find myself unable to do so, Mr. Chairman.

The Chairman —The question is on the amendment offered by Mr. Bunce which has just been read. Those in favor will say Aye. Opposed, No. It seems to be lost and is lost. The question now is upon the amendment offered by Mr. Doughty. The Clerk will read.

The Secretary — By Mr. Doughty. Page 3, line 22, strike out the words "the same" and insert in place thereof the word "them".

The Chairman — Are you ready for the question? All in favor of the amendment will say Aye. Opposed, No. It appears to be lost and is lost. That concludes the amendments to section 4. The question now is upon the adoption of section 4, without amendment, no amendment having been approved by the Committee of the Whole. Are you ready for the question? All in favor of section 4 will say Aye. Contrary, No. It appears to be carried and is carried. Section 5 is the next order. The Clerk will read the section, and then the amendment offered by Mr. Tanner this morning.

The Secretary — Section 5. The head of the Department of Accounts shall be the Commissioner of Accounts. He shall have power to examine and verify all accounts showing the financial transactions of the State and its several departments and officers. The amendment offered by Mr. Tanner: Page 3, line 26, after the period following the word "officers" insert: "He shall also make such special examinations and reports as from time to time may be required by resolution of either house of the Legislature."

Mr. Wagner — Mr. Chairman, I offer the following amendment.

The Chairman — Mr. Wagner offers the following amendment which the Clerk will read.

The Secretary — By Mr. Wagner. Page 3, line 26, after the period insert the following: "He shall be elected by the State Legislature for a period of six years and shall be removable by

the Legislature upon charges after an opportunity to be heard. If a vacancy occurs before the expiration of the term his successor shall be elected by the Legislature, or, if the Legislature be not in session his successor shall be appointed by the Governor until the next session of the Legislature. He shall report to the Legislature and to the Governor annually and at such other times as shall be prescribed by law."

Mr. Wagner — Mr. Chairman, in view of the remarks made a moment ago in a moment of excitement by the Chairman of the Committee whose report we have under consideration, I hesitated to offer any further amendments to this proposal. I am confident, that, upon mature deliberation, he will have expunged from the Record the very unfair and insidious reflection he has cast upon the minority members of this body. It has never occurred before in this house and I think the minority are entitled to a great deal of credit, for, under trying circumstances and conditions, during the consideration of several reports we stood our ground faithfully, cast no reflections upon our opponents and were certainly the victims on several occasions of intense partisanship. I was admonished myself early in the session by some of my Democratic colleagues that this was to be a non-partisan Convention, and therefore, I continued to hope that, even while partisanship might have been considered in some of the proposals, as a general proposition, we would discuss these matters from the standpoint of merit and a knowledge of the government of the State of New York; I have attended nearly every session and have given my best service — it may have been insignificant; it may be that, in the eyes of the Chairman of the Committee, it was insignificant — to make effective and perfect, as the result of such experience as I have had in the government of the State, the provisions which you propose to put into the Constitution. And yet, after giving that faithful service — because we stated what I think is known almost to be a fact — we are told that we are mere puppets in this Convention and that, before we can pass our judgment upon any proposal, we must go to some other place and find out what our action or what our judgment should be upon any proposal. I am not speaking in any spirit of egotism, but I put myself upon a par with the distinguished Chairman of the Committee on Legislative Organization in knowledge of the affairs of State government, and I put myself on a par with him in my sincerity, independent of any other man's judgment, to do whatever I can to advance the welfare and the government of this State. I ask him to view the record of the minority in the last session of the Legislature and determine for himself whether his party or whether we contributed more to the best interests of the welfare of the State. I

hope that, before this evening is over the Chairman, after mature consideration, will have expunged from this Record the reflection which he has cast upon honorable men in this body, trying in an honorable way to serve the people of this State.

Mr. Brackett — Of course, when the delegate said, "the Chairman of the Committee on Legislative Organization," he meant the Chairman of the Committee on Governor and Other State Officers?

Mr. Wagner — Yes.

Mr. Quigg — Will the gentleman tell me what he understood the Chairman of the Committee on Governor and Other State Officers to mean when he said that some of us had to go down to New York to find out what to do?

Mr. Wagner — I refuse to believe that the gentleman from Columbia is so innocent in the affairs of politics as not to know what the distinguished Chairman meant. The emphatic way in which he expressed it, and the direction in which he looked, made quite clear what he desired to have the members of this Convention and the press facing us believe that he meant.

Mr. A. E. Smith — At this point I would like to have it said, speaking for myself, that if there is anything to be expunged from the Record that was spoken by the distinguished Chairman of the Committee, I would like to have it remain on the Record as applying to myself, for this reason: I do go to New York to find out what they think about things in New York. This week I could not go down. I received word from the leader of the majority that everybody was expected here on Monday, so, instead of going to New York, I went to Saratoga. I stayed over Sunday with my family and just before I left the hotel for church the telephone bell rang. I was requested to answer a long distance call, and it was from Tammany Hall. Somebody said to me, "Is this you, Al?" I said, "Yes." "This is Tammany Hall." I said "I know." "What is the meaning of the printed matter on the last four lines of page 3 of that State officers bill?" I answered back "That is a new job, that is another place." Word came back, "Who is proposing that?" I said, "A gentleman named Tanner." And the answer came back "The Republican State Chairman?" "Yes, sir." "Read him page 5 of the Governor's message on Monday night and try and do it before eleven o'clock." "The increase on an unprecedented scale in the number of State officials employed and the reckless increase in salaries in nearly all the departments are explainable only by the existence of a deliberate plan to fasten the control of the party upon the State by the use of the vast amount of official patronage."

Mr. Wagner — Mr. Chairman, that having been satisfactorily

disposed of, I propose to briefly explain my amendment. In speaking on this bill briefly last Friday, I referred to the amendment which I proposed to make to Section 5. The office as you propose to make it now makes the investigator of all our departments of the State, appointed by the Governor, directly responsible to him and removable only by him. My contention is that, if you want to make an elective investigator of our departments, one who is to systematize the work in all the branches of government, he should be an impartial and independent official. Mr. Tanner this afternoon stated that he proposed to make the commissioner of accounts office similar to the office of commissioner of accounts of the city of New York. If that is so, I believe that, as an impartial investigating commissioner, or whatever name you propose to give him, he will be an absolute failure. What is the situation in the city of New York? Perhaps this may not apply to the present administration, but it certainly does apply to all past administrations. The office of commissioner of accounts has been used by the mayor as a club over the heads of departments either under his jurisdiction or even the elected officials of the city of New York, or say the borough presidents, elected by the people, differ with him upon some important policy, he has this convenient commissioner of accounts to send into that department for the purpose of making an investigation. I will wait until I can get some order. I am trying to convince some of these people and I cannot make myself heard.

The Chairman — The Convention will please come to order.

Mr. Wagner — You say, is that true; has it ever been used in that way? I need only take you back to the McClellan administration, a Democratic mayor; a borough president or two standing up independently, dared to differ with him upon some important policy in the government of the city of New York and also upon some political question; and in his desire for revenge because these men dared to be independent and assert their own views upon the politicial and upon municipal governmental affairs, he sent in to that office the commissioner of accounts to ascertain if in some far corner of the office, even if he could not bring anything personally home against these men, he found some sort of an irregularity of which some subordinate might have been guilty, so he could besmirch, if possible, their character and reputation in the community. Now, that is what is going to happen if you provide that this commissioner of accounts, or investigation, or whatever you may call it, is going to be made the appointee of the Governor and removal by him at will. He will be under his direction. Now, the Governor will not send him into a department to investigate and see how the business is conducted, whether properly or not, if it

is one of his own appointees, one of his friends, one of those politically faithful to him; but if some one at the head of a department in any other branch of the State government should happen to differ with him upon some important political matter, or governmental matter, and if he be a narrow Governor — we cannot guarantee the high character of all our future governors —he will use the commissioner of accounts to bring this particular official into line; and you can do nothing more destructive to decent and effective investigation than to make the investigation a mere partisan one. If you want an investigating body in the State, in the State government, make it an impartial investigating body. Not one going in there for the purpose of getting something upon the individual, but one who will go in there for the purpose of systematizing the work, and if there is any extravagant system employed in that particular department he will make some recommendations and suggestions to the head of the department which will make the system more perfect and more economical.

The Chairman — Will Mr. Wagner kindly co-operate with the Chair in enforcing the five-minute rule?

Mr. Wagner — I will finish in a sentence or two.

The Chairman — It has been twice that long already.

Mr. Wagner — I want to apologize to the Chair. I did not know you had called time on me before, or I would have stopped talking. What I propose to do is simply this. I propose to make this investigator of our departments, independent of any of the departments which he has to investigate, independent entirely of the executive, and then I propose that he shall be elected by the Legislature. Now, if there is some other independent body, which you think should be chosen, preferably to the Legislature to make this appointment, or election, I will accede to any amendment that the majority of the delegates to this Convention desire. What I wanted is to have this official independent, so he can do impartial and thorough work.

The Chairman — The Chair regrets, but he must enforce the rule, owing to the large number of delegates who wish to take part in the debate.

Mr. Stimson — I fully appreciate the sincerity in which this amendment is offered by Senator Wagner, which deserves careful consideration; yet I sincerely hope it will not prevail. The amendment offered by Mr. Tanner and added to the provisions of section 5 as it stands I think will fully provide for the necessary impartiality on the part of this examiner of accounts, or commissioner of accounts, and will enable him to fulfill the purpose of making all investigations required by the Legislature, but for the reason I mentioned this morning, I think it is of the

highest importance that he should be a man selected with care by the Governor, for one of his principal functions necessarily must be the function of assisting the Governor and furnishing him with the information necessary to prepare the budget under the budget which has been decided upon and adopted by this Convention. I think under these circumstances where we have an officer appointed by the Governor and yet who is subject to the orders of the Legislature in respect to investigation and reports, we have taken every step that can properly be taken to insure that he will fulfill his duties with thoroughness and without fear or favor from either of those sides. Of course, as my friend, Mr. Deyo, suggests, it does not interfere with any further action or investigation which the Legislature may see fit, but the change which has been made in making the office of the Comptroller, holding the great financial powers which it does, an independent elective office, necessarily makes it essential that the Governor should have means of investigation and of examination into that office, in order to see that the laws for which he is responsible are adequately enforced, and to insure that the financial functions of the State are faithfully performed.

Mr. Wadsworth — Mr. Chairman, may I ask the gentleman from New York, what is the reason the Treasurer could not perform the duties now provided for in your amendment by the commissioner of accounts? We all agree that the Treasurer has no duties to perform at the present?

Mr. Stimson — Excuse me, we do not agree to that. Just as I stated this morning.

Mr. Wadsworth — The Constitution says all you can do with him is to remove him. The Constitution reads: "The Treasurer may be suspended from office by the Governor, during the recess of the Legislature, and until thirty days after the commencement of the next session of the Legislature, whenever it shall appear to him that such Treasurer has, in any particular, violated his duty." That is all there is in the present Constitution in regard to the duties of the Treasurer.

Mr. Stimson — That is all there is in regard to the duties of any of these officers who are referred to in the Constitution.

Mr. Wadsworth — Whatever duties are assigned to the Treasurer are assigned by the Legislature and I ask you if these additional duties cannot be laid down by the Legislature, particularly in view of the fact that he has very little to do if anything at the present moment, — could he not perform these duties if they were devolved upon him by the Legislature.

Mr. Stimson — It is hard to imagine a Treasurer who will not be given custody of the funds of the State. The present

Treasurer is the paying teller of the State, in regard to its funds. He is the cashier to a certain extent of the Comptroller. Now assuming that it is quite likely that the Legislature will give at least these functions to the new Treasurer, I say it would be an absurd position to take to try to make a man who fulfilled the duty of a paying teller in a financial institution at the same time the examiner of that financial institution.

Mr. Wadsworth — But you can impose other duties upon him in the Constitution just as you impose other duties upon the examiner of accounts.

Mr. Stimson — I simply say that I have never heard yet a paying teller a bank examiner.

Mr. Wadsworth — That is not the case before us at all.

Mr. Quigg — The question I want to ask is this: Why in view of the possibilities of change, political change, Legislature and Governor, would it not be a good thing to let the Legislature elect this officer, seeing that it might frequently be the case that the person elected by the Legislature to make this accounting would be a Republican when a Democrat would be in office as a Governor, or a Democrat when a Republican would be in office as a Governor. Would not that be a wise thing to do?

Mr. Stimson — I think it would be a wholly unwise thing to do.

Mr. Wadsworth — Has the committee taken into account at all the increased initial cost to put into operation the committee's scheme? May I put the question to you, Mr. Tanner or to Mr. Stimson; the increase in the initial cost of putting this scheme into operation; what are the figures? Twelve or fifteen secretaries, probably six or eight thousand dollars a year?

Mr. Tanner — I haven't figured that out; I don't know.

Mr. Wadsworth — You make another department distinctly and definitely, and which would grow into a large bureau, probably cost fifty or sixty thousand dollars; haven't you any figures on the cost at all?

The Chairman — Are there any amendments to section 5?

Mr. Wadsworth — I will offer my amendment in view of that fact.

The Chairman — Mr. Wadsworth offers an amendment to section 5 which the clerk will read.

The Secretary — By Mr. Wadsworth: Strike out sections 5 and 6 and substitute the following as section 5: "Section 5: There shall be a department of treasury accounts, at the head of which shall be the treasurer, who shall be appointed by the Governor. He shall perform all the duties now performed by the treasurer or hereafter imposed upon him by the Legislature

and shall also examine and verify all accounts showing the financial transaction of the State and its several departments in Albany."

Mr. Wadsworth — The effect of that amendment is simply to combine in one department the duty that the committee's report devolves upon the treasurer and the commissioner of accounts. I cannot see any reason whatever for creating another department clothed with these powers. The treasurer can perform the duties which are now provided for and to be exercised, or performed by the commissioner of accounts and it simply substitutes the treasurer for the commissioner of accounts and does away with the necessity of creating another department and that is all there is to it.

The Chairman — The question is on the amendment offered by Mr. Wagner. The Clerk will read the amendment. No, Mr. Tanner's amendment offered this morning is the first amendment.

The Secretary.— By Mr. Tanner: Section 5, page 3, line 26, after period following the word "officers", insert the following: "He shall also make such special examinations and reports as from time to time may be required by resolution of either House of the Legislature."

The Chairman — Are you ready for the question? All in favor will say Aye, contrary, No. It appears to be carried and is carried. The next question is on the amendment of Mr. Wagner. The Clerk will read.

The Secretary — By Mr. Wagner: Page 3, line 26, after the period, insert the following: "He shall be elected by the State Legislature for a period of six years and shall be removable by the legislature upon charges and after an opportunity to be heard. If a vacancy occurs before the expiration of the term his successor shall be elected by the Legislature, or if the Legislature be not in session his successor shall be appointed by the Governor until the next session of the Legislature. He shall report to the Legislature and to the Governor annually, and at such other times as shall be required by law."

The Chairman — A division is called for. Those in favor will rise. The Clerk will count. Those opposed will rise. The desk announces 41 for the amendment, 81 against. It is declared lost. The question is now upon the amendment offered by Mr. Wadsworth. Are you ready for the question? A division is called for. All in favor will please rise. Contrary, will please rise. The desk announces 54 for the amendment, 76 against. The amendment is declared lost.

Mr. Wasdworth — Now, Mr. Chairman, if I am in order, I would suggest that the Committee on Governor and Other State

Officers furnish this House with the estimated cost of putting this scheme in operation.

Mr. Wickersham — Mr. Chairman, I don't think this question is for the Committee of the Whole.

Mr. Wadsworth — I suggested if it is in order.

Mr. Wickersham — Mr. Chairman, I suggest it is not in order in the Committee of the Whole.

Mr. Wadsworth — Where is it in order, in the House?

Mr. Wickersham — In the Convention.

The Chairman — I understood Mr. Wadsworth to make a suggestion, not a motion.

Mr. Wagner — Mr. Chairman, the Committee having in consideration the economizing of the State's funds in this new system should give us a statement of what their idea is of economy.

The Chairman — There is no question before the House excepting the final question on the adoption of section 5 as amended.

The Secretary — Section 5: The head of the department of accounts shall be the commissioner of accounts. He shall have power to examine and verify all accounts showing the financial transactions of the State and its several departments and officers and shall also make special examinations and reports as from time to time may be required by resolution of either House of the Legislature.

The Chairman — The question is now upon the adoption of the section as read. All in favor will say Aye, contrary, No. It is carried. The section is adopted. Section 6. The Clerk will read.

The Secretary — Section 6. The head of the department of the treasury shall be the treasurer.

Mr. A. E. Smith — Mr. Chairman, I move to strike that out. There is no occasion for putting that in at all. We will assume for the sake of argument, that you propose to continue this treasurer, even though you are not able to give any reason why you do it. Suppose you make your mind up to do it anyway, isn't it sufficient to say in section 1 of this article, "There shall be a Department of the Treasury?" What is the occasion for it? I think it ought to come out of there; and as for looking for an answer to the question of my dear old friend as to the cost, why, when you are making places you never think of that, that is, for somebody else to figure at a later time. I maintain that there is absolutely no need for this treasurer. Nobody has been able to give any reason why this State should have a constitutional officer to be known as the Treasurer. The gentleman from New York, Mr. Stimson, says he has charge of the depositing of the funds. That is not a function of sufficient importance to continue his office in the Constitution. Remember that you promised us a little bit more than a

short ballot. Remember your promise runs to a cutting down of the number of State officials in the interest of economy. Instead of that you are creating them as you go along through the bill. You have a chance to recoup here, if you insist you must have a Commissioner of Accounts, save the money on some other entirely useless office.

Mr. Quigg — We have not made any promise to reduce the number of officers. We have continued them all in existence.

Mr. A. E. Smith — In the bill you have, but in the platform plank you did promise to reduce.

Mr. Quigg — I am talking about what is being done here.

Mr. A. E. Smith — Of course, what happens here and what is in the platform plank are two entirely different things. I thoroughly understand that. Every dollar of money deposited in the bank by the State of New York at the present time there is a bond put up by the bank, which could be done by the Comptroller and would not make a single bit of change.

The Chairman — The Chair informs the gentleman that his time is up.

Mr. A. E. Smith — You were too quick on that one, now. The Legislature can provide by law for the countersigning of the State's checks by the head of the department and that is left for the Legislature to do and this unnecessary amendment should be taken out.

The Chairman — The Clerk will read the amendment offered by Mr. Smith.

The Secretary — By Mr. A. E. Smith. Page 4, lines 1 and 2, strike out all of Section 6 and renumber subsequent sections accordingly.

The Chairman — Are you ready for the question? Those in favor will say Aye, opposed No. The Chair is in doubt. Those in favor will rise. Those opposed will rise. The desk announces 42 for the amendment, 76 against. The Chair is no longer in doubt, and the amendment is lost. The question is now upon Section 6. The section has been read. Unless anyone wants it read again. All in favor of Section 6 will say Aye, contrary No. It is carried. The Clerk will read Section 7.

The Secretary — Section 7. The head of the department of taxation shall be the state tax commission to consist of three members.

Mr. A. E. Smith — Now, Mr. Chairman, I submit to the Convention that this is reducing the thing to an absurdity.

Mr. Tanner — Mr. Chairman, will the gentleman yield until the amendment is read that was offered this morning?

The Chairman — The Clerk will read the amendment offered by Mr. Tanner this morning.

The Secretary — Section 7, page 4, line 3, strike out the word "the" at the end of the line and in place thereof insert the article "a"; line 4, strike out the words "to consist of three members". And insert in place thereof "or commissioner, as may be provided by law." Making the section read "The head of the department of taxation shall be a State tax commission or commissioner as may be provided by law."

Mr. A. E. Smith — Well, Mr. Chairman, I might say that that is the best way to put it in, if you are going to put it in, but what is the reason for putting it in the Constitution, if in Section 1 you have a department of taxation? What is the reason for saying that it shall either be a commission or a commissioner as the law shall provide. I fail to see any sense in it. I don't propose to discuss it any longer; it is too absurd.

Mr. F. L. Young — Mr. Chairman, does not the same criticism properly apply to that as applied to the Public Service Commission the other day when it was stated that it should be "one or more"? Aren't you dividing legislative action or activities when you say "commission or commissioner as the law shall provide"? I think the Constitution, too, should state the number of officers, unless you do you will have jockeying with it.

Mr. Stimson — Mr. Chairman, there is this difference between this case and the case the gentleman from Westchester mentioned. In that case the commission was not removable at the pleasure of the Governor. There would, therefore, be the temptation to ripper legislation. The proposition here in the committee was a commission that was removable at the pleasure of the Governor. There was no temptation in this.

Mr. Quigg — Mr. Chairman, I would ask the gentleman which is singular; "commission" or "commissioner"? The amendment proposed by the committee says there shall be a "commission or commissioner as provided by law". Now which is singular? Now, why could not one commissioner be appointed under a commission?

Mr. C. A. Webber — Mr. Chairman, I am sorry to have to oppose this amendment, section 7. The amendment I think as originally drafted was accepted by the committee simply because it was proposed by Mr. Smith, who does not seem to be satisfied with it now; but I think it was proposed without consideration of what the functions of the tax commission are. It is impossible to perform those functions without a commission of three. It is a practical question. The tax commissioner dates back to 1859 when the State Board of Assessors of three was appointed and it was then required and has ever since been the law that that Board of Assessors for the purpose of equalizing taxation in

the State shall personally visit every county in the State at least once in each two years and in 1911 the Legislature, recognizing that it was impossible for two members of that commission to visit each county in that time together, a special bill was passed, authorizing the examination and visitation to be made by only a single member, and now you propose the very first original function of this commission, to turn it over to one man. It is impossible for him to perform the duties. This duty is performed in 34 states by committees of three and in one case of five; it is a commission that is recognized everywhere as a judicial commission, performing judicial labors and distinctly stated in the examination made before this commission was introduced in other states that because it is of such a character, judicial, that it should not be given over to one member. Not only that but you have put here upon this commission additional duties to perform, that ought not to be entrusted to one member. You have made them, first, to assess the franchise tax. That cannot be done and ought not to be done by one member. It requires a board to do it and a board does it all over the country. You are intending to make also state centralization of taxation in a number of ways to put further assessments to be made by the State, and do you expect that that is all going to be done by one member? It is not done anywhere in the country and ought not to be done here.

The amendment has not, I think, been sufficiently considered. It ought to be considered by the committee that this commission should remain as it universally is, a commission of three.

Mr. Vanderlyn — Mr. Chairman, could I inquire of the Chairman of the Committee on Governor and Other State Officers, if it would not accept the original proposition instead of as amended? It seems to me it is peculiarly a judicial office; with the functions of a judicial office and anyone who is arguing a matter of taxation would prefer to argue before three men, to get their ideas while it would be a dangerous matter to put all the functions of taxation in the hands of one man and the necessarily personal contact that must be had throughout the State can only be performed by three men. And I hope we can have an expression from the Chairman of the committee as to whether he would accept and retain the article as originally proposed.

Mr. Tanner — Mr. Chairman, may I reply to Mr. Vanderlyn? I find myself in concurrence with him as a matter of personal opinion. I believe that the functions of that department are semi-judicial. The amendment was originally drawn by me to meet a suggestion of Mr. A. E. Smith that it was objectionable in that it froze into the Constitution the present State Taxation Commission. Now, perhaps I am willing to amend or modify

that amendment by striking out "or commissioner as may be provided by law," and also striking out the words in the original amendment "to consist of three" reading, "The head of the department of taxation shall be a state tax commission."

The Chairman — Are there any other amendments? Any other gentleman wishing to be heard? The question then is on the amendment of Mr. Tanner as amended by Mr. Tanner. The clerk will read.

The Secretary — Page 4, line 4, after the word "commission," insert a period; strike out the balance of the line. Line three change the word "the" at the end of the line to "a", making the section read, "The head of the Department of Taxation shall be a State Tax Commission."

The Chairman — You have heard the amendment read. Are you ready for the question on the amendment? All in favor will say Aye. Contrary, No. It appears to be carried. It is carried. The question now is upon the adoption of the section as amended. All in favor will say Aye, contrary, No. It is carried and adopted. Section 8; the clerk will read.

The Secretary — Section 8. The head of the department of State shall be the Secretary of State.

Mr. J. G. Saxe — Mr. Chairman, Mr. Vanderlyn had such good luck with the committee on the last section, that I want to see if I cannot get a little bit of help on this one. Now I have been very good; I have not had a word to say during this whole long debate, although they have followed the three plans of the Bureau of Municipal Research and myself most scrupulously, but here is one of the instances in which they got away from us. In our bill we gave a little bit of distinction to the Secretary of State in that we pointed out what his duties were and when the committee reported Printed No. 803, following the language of our bill, it said the department of state shall be administered by the Secretary of State. He shall be the keeper of the great seal and of the records and of the archives of the State; he shall issue the writs of elections, and certify the result. And between the time the committee reported that language in 803 and the time the present bill came in, No. 831, the definition and distinction of the powers of the Secretary of State had completely disappeared. Now I want to ask the committee if they won't re-establish the language of their first report on this particular matter. I should like very much to have made the same request as to the Comptroller, and following the Bureau of Municipal Research bill, but I knew that that was absolutely impossible, but on this particular case I am very anxious they should do it, and I will tell you why. It is not merely a question of giving him the archives

of the State, which ought to belong to him, but the writ of election. The Constitution of the United States since its first adoption had provided for the writ of election before the election of a Congressman and as the measure was drawn in Washington for the election of United States Senators by the people, they again inserted that phrase, that there be a writ of election before a United States Senator is elected. That is a constitutional term taken right from the United States Constitution and when a question of law was raised a few years ago in litigation, here in New York, we could not find out from any of our statutes or decisions what a writ of election was or where it comes in, although the Constitution of every State in the Union ought to contain a provision as to what officer ought to issue a writ of election. There is no question about it under our State law, as properly construed, that is the requisite and entirely proper function of the Secretary of State, but I think it really quite important that we should put that into the Constitution as one of the definitions of the Secretary of State. I shall move to substitute for Section 8 the language of the bill which I will send up to the desk, which reads: "He shall be the keeper of the great seal and of the records and archives of the State, shall issue writs of election and certify the results." I really think it is quite important that the Committee's original report in this one respect should stand.

Mr. Wickersham — The seventeenth amendment to the Constitution of the United States provides: "When vacancies happen in the representation of any state in the senate, the executive authority of such state shall issue writs of election to fill such vacancies: Provided that the Legislature of any state may empower the executive thereof to make temporary appointment until the people fill the vacancy by election as the Legislature may direct." I think that a very serious question might arise if you put a provision in the Constitution empowering this appointive officer to issue a writ of election to comply with the provisions of the amendment of the Constitution of the United States, which requires the writ of election to be issued by the executive authority thereof, which undoubtedly would be the Governor.

Mr. J. G. Saxe — It undoubtedly did not mean anything at all —

Mr. Wickersham — I think it meant the Governor there.

Mr. J. G. Saxe — That question was all thrashed out by Congress last year. The executive authority means the officers in the executive department recognized by the Constitution and the laws of the State, and Congress so held last year. That is why I want to have some one officer in the executive department designated to be the man to issue these reports, otherwise independent of the executive authority.

The Chairman — Will the delegate send his amendment to the desk?

Mr. Stowell — I offer the following amendment.

The Chairman — Judge Stowell offers the following amendment which the Clerk will read.

The Secretary — By Mr. Stowell, page 4, line 6, after the period following the word "state" insert: "He shall be elected at the same time and have the same term as the Governor."

Mr. Stowell — I will just say that I am not a short ballot advocate. This question has been discussed pro and con to such an extent that nothing I can say will add any knowledge to it. I will content myself with simply reading an extract from that monumental work of Mr. Lincoln upon the Constitution of the State of New York in describing the proceedings of the Convention of 1872.

I want to say first that I believe that the office of Secretary of State is practically equal in importance in every respect with that of the Attorney-General and that of the Comptroller. Mr. Lincoln, in volume 2, page 524, describing the proceedings of the Convention of 1872 says: "The Secretary of State was an inheritance from the colonial period, and it is worth noting that the office was continued, apparently, by general consent, and without any constitutional statutory authority. I have not been able to find any statute creating the office. The obvious necessity for such an office, and the fact that it was for so many years an important element in colonial administration, were doubtless deemed a sufficient justification for the neglect by the Convention of 1777 and the first Legislature to provide specifically for it, and prescribe the duties of the incumbent. A Secretary of State was appointed by the Council of Appointment on March 13, 1778, but without any specific authority. The first secretary was John Morin Scott, who had been a prominent member of the first Constitutional Convention. Governor Hoffman's opinion that the Secretary of State ought to be appointed by the Governor had no practical historical support. In the colonial period the secretary of the colony was not appointed by the Governor, but, like the Governor himself, received his appointment from the Crown. Neither had the Governor the power of removal; and instances are not wanting in which the Governor often found himself at variance with the secretary, preferred complaints against him to the home government, and urged his removal and the appointment of another more agreeable to himself. During that period the secretary was charged with the performance of duties not indirectly connected with the Governor's administration, but relating to other elements of colonial affairs."

The Chairman — The gentleman's time has expired.

Mr. Stowell — May I have unanimous consent to finish this? It is only half a page.

The Chairman — If there is no objection.

Mr. Stowell — "Under the first Constitution the Secretary was appointed by the Council of Appointment, consisting of the Governor and four Senators, and on the abolition of that council by the Constitution of 1821, his appointment was transferred to the Legislature on joint ballot. In 1846 the office was made elective by the people and has so continued since that time. The enlargement of the duties of the office in recent years makes still more impracticable the suggestion that the Secretary ought to be appointed by the Governor, and that his office ought to be deemed a branch of the executive department. His duties as custodian of the State archives, his functions in relation to corporations and elections, which functions are often judicial, or semi-judicial, his powers as a member of various State boards, make him one of the chief officers of the State, and the office one which, from almost every point of view, should be filled by popular election rather than by executive appointment."

Mr. Bunce — I desire to second the amendment proposed by Judge Stowell, and I do this without any compunction of conscience, because I have never stated, before election or since, that I was in favor of the short ballot. Last Saturday evening, in the words of Commissioner Green, I went back home and talked with a great many of the men that I saw on the street and in business places, and any that I saw yesterday and they said to me, "We read Senator Brackett's speech and we agree with him that we all know enough to select our own State officers, and we do not want any one else to appoint them. I believe it is my duty to oppose the effort to take away from the people the right to select their own State officers. Besides that, I believe the Secretary of State should be elected by the people because he is the officer who canvasses the vote for Governor and he should not be looking forward to appointment by the Governor, whose vote he canvasses. He should be the head of the election bureau, independent of the Governor, and I hope that Judge Stowell's motion will prevail.

Mr. Marshall — I think that the amendment proposed by Senator Saxe is a wise one. It is desirable that some officer shall be designated who shall exercise the constitutional power of issuing writs of election, and certifying the results. The Committee of the Whole on Friday adopted the Proposed Amendment of the Committee on Future Amendments, which contained a clause to the effect that the validity of an election upon any amendment or Proposed Constitution which contained any question submitted to

the electors of the State under the Constitution, and the determination whether the Proposed Amendment or Constitution which has received the number of votes requisite for the adoption thereof, may be contested in the Supreme Court by any elector by an action in equity brought against the Secretary of State. That contemplates that the Secretary of State shall perform these important functions in regard to the declaration of the result of an election. We have committed ourselves to that idea here in this Committee and it is desirable that we shall know who the officer is who shall be in charge of the writs of election and of certifying those results. For those reasons, in addition to the historical reason which has been adverted to in the debate, I think that we should adopt this provision.

Mr. Tanner — I do not see any particular objection to including the portion which Mr. Saxe wants included in the section under debate. It was, as Mr. Saxe has said, in the original draft in the exact words that Mr. Saxe proposes. The Committee has, in all cases where an officer has been put in the constitutional framework and there has not been a design to change the function of that office, merely put the department itself in, with him at the head, leaving it entirely to the Legislature to make any additional provisions necessary. That was what was done in this case. After listening to what Mr. Marshall has had to say and what Mr. Saxe has had to say I am not sure that there is not enough reason for putting this part regarding the keeping of the seal and the writ of elections — I am not sure that that is not enough to take it out of the rule adopted by our Committee not to needlessly put in the functions of officers unless there is a radical change from the office as it has heretofore existed. Therefore, if it is the wisdom of this Committee, I make no objection to Mr. Saxe's amendment. As to Judge Stowell's amendment, I trust it will not prevail. It does seem to me that the Secretary of State, especially if he should take over such other functions as, possibly, the superintendent of elections, if the Legislature so decided, or in collecting the automobile tax as he does at present, or in making a census — it is an executive office and I think it should not be made elective, but should be appointive. I trust, therefore, that the Committee will not adopt Judge Stowell's suggestion.

Mr. Cullinan — On this point, I have differed with the Committee on Governor and Other State Officers as to the election of the Secretary of State, and I would give the same reasons, in accordance with the splendid argument, lucid and fundamental in every respect, made by Senator Brackett last Friday, born of fifteen years of devoted, loyal and efficient service in behalf of this State. Nobody has anything to say about the efficiency of

the present office as conducted by the present Secretary of State. It is conducted efficiently, as all State offices have been and are now conducted, where they are responsible to the people, and I cannot see the logic of the gentlemen who say that the Governor, because responsible to the people, will discharge his duties efficiently and properly, and deny that right to the State officers elected by the same people. But the most vicious thing in this bill is this: The Secretary of State is the Chairman of the State Board of Canvassers, as referred to by my friend Mr. Bunce. In addition to that, in canvassing the votes of the State, he can, even in the absence of the State officers, call in an independent board and canvass those votes. Gentlemen, is there any Governor who is going to be above the impulses of ambition and the suggestions of sycophants? I fear it. There are some in this Convention that remember the fever heat in 1876, when this country was on the verge of a revolution, in the Hayes and the Tilden election. The people of this country are more sensitive about their votes, that they are being counted, and they are almost more than of any other question, even of taxes. Thanks to the sober sense of the American people at that time, there was not a revolution. Come back to 1872. Gentlemen, no matter which side we were on, there was a fear that there was a scandal in the conduct of the office of Secretary of State. It resulted in the election of a Democratic Senator in the Senate of the State, and a Democratic United States Senator, but a year from that time, a revolution took place which sent the Democratic party out of power by the largest majority, and a repudiation of the conduct of that great office. Gentlemen, don't ask the Governor of this State to appoint the man who is going to count his votes.

Mr. Unger — Mr. Chairman, as a good Democrat I am going to stand squarely upon the Republican platform. You see, we Democrats, particularly the younger generation, are inspirited by the Jeffersonian doctrine, that the majority of the people shall rule. And when the majority of the people in no uncertain terms rejected the Democratic platform it then became our business to support what that majority wanted. The Democratic platform specifically provided for the election of only four certain State officers. The Republican platform as has been so succinctly stated left it to the conscience of the delegates to this Convention, to determine of what and how our State Government should be fabricated. Now, sir, I do believe, in view of the rebuke that was administered to the Democratic State platform, that the people have unequivocally repudiated the short ballot doctrine. Mr. Chairman, no more important office exists in this State than that of Chairman of the Board of State Canvassers. For the very

reason that the Constitution of this State prevented the Sheriff from succeeding himself, so should the office of Secretary of State, which is the office of the State Board of Canvassers, be at the beck of the people. And I sincerely trust that my brethren from the country will join with us real progressives of the city, the men opposed to this reactionary principle of the short ballot, and see to it that there are retained in this State as chosen representatives of the people those whom our forefathers saw fit to fix there.

Mr. Brackett — As I recall, under the Election Law, there are various important semi-judicial duties that attach to the office of Secretary of State. I am sure that I am right when I say that he determines with respect to whether names shall go on the ballot or not, that in the first instance application has to be made to him to settle the various important questions, the details of which are not in my mind now, but with respect to whether names shall go on the ballot. He decided as between the — it is not done by lot, nothing of the kind — I remember a case of where the application by John Anderson, who got on the ticket as State Committeeman against a man who was a resident of Clinton county. In the first instance the matter had to be decided by the Secretary of State, and the question of emblems is suggested. Now, when he decides, then an appeal runs from his decision to the court, so that he has very substantial and well-defined semi-judicial duties under the present law. There is determined whether there is a vacancy, as my brother suggests. It is for these reasons that I am going to vote for Judge Stowell's amendment, that he should be elected by the people, because I don't believe, holding these powers, I don't believe that he should be subject to the beck of the Governor, that he should be subject to the influence of the Governor, but I do believe that he should get his commission directly from the people.

Mr. Ryan — I am in favor of the amendment as proposed by Judge Stowell, for the reason that the Secretary of State having in charge the election machinery, could at some psychological time be the means of causing much trouble to the State of New York. An example that I know of personally occurred some twenty years ago in a certain city on Long Island, where a close contest for the mayoralty was being waged. The defeated candidate had control of the city clerk, whose functions were similar to that of the Secretary of State as far as the election machinery was concerned. He issued a certificate of election to the defeated candidate and after the delivery of the certificate took a vacation for two or three months to avoid service in quo-warranto proceedings instituted by the duly elected candidate. The defeated candidate took his

seat as mayor and held it for upwards of one year, until ousted by court proceedings. To avoid such a condition much care should be given to this particular provision so that that part of the election machinery be given the proper protection by being placed in the hands of an elected official.

Mr. R. B. Smith — I wish to call the attention of the members of this House to the danger which may come to one or both of the great political parties of this State if you take from the people the right to select the one officer who in the final analysis, under the present election laws, we depend for the protection of the purity and integrity of our ballot. I refer, sir, to the fact that under any logical arrangement or segregation of duties, you must assign to the Secretary of State the appointment of the Superintendent of Elections, who is now an independent officer, appointed for a term of four years, with the approval — requiring the approval of the Senate and removable only upon charges and an opportunity of being heard. I remember well the controversy over the powers to be given to that officer. I remember well in this House, when for several years the members of the present minority refused to vote for the appropriation bill because it carried an appropriation for the expenses of that Department. Two hundred and thirty-four deputies, and there may be 500, each with the power of a sheriff, each with the power of unlimited arrest, each with the power by the interposition of challenges, as I have reason to know, may absolutely disfranchise the voters of an election district. Do you purpose to put that arbitrary power in the hands of a simple appointee of a Governor, when you know that the loss of ten votes in an election district means the turning over of this district to either party, as a rule. I simply want to point out now the danger that will come. I point out the responsibility which you are imposing upon the Governor, and to which I don't believe we should subject him. I believe this is the most dangerous proposal, striking as it does to the very roots of our government, and I hope that you will leave that power with the people.

The Chairman — The question is on the amendment offered by Mr. Saxe. The Clerk will read the amendment of Mr. Saxe.

The Secretary — By Mr. J. G. Saxe: Page 4, strike out lines 5 and 6, and substitute the following: "Section 8. The department of state shall be administered by the Secretary of State. He shall be the keeper of the great seal and of the records and archives of the State, shall issue writs of election and certify the result."

The Chairman — You have heard the amendment as read. All in favor will say Aye, contrary, No. It is carried.

Mr. Stowell — Will the Clerk now please read the amendment

as it now stands, in order to know where my proposed amendment comes in.

The Chairman — Your proposed amendment will now come up, Judge Stowell.

Mr. Stowell — I ask for a rising vote on that proposition.

The Chairman — The Clerk will read the amendment offered by Judge Stowell. The Desk informs the Chair that the amendment of Judge Stowell applies all right as it stands. The Clerk will read.

The Secretary — By Mr. Stowell. Page 4, line 6, after the period, following the word "state", insert "He shall be elected at the same time and for the same term as the Governor."

The Chairman — You have heard the amendment offered by Judge Stowell. A rising vote is called for. Those in favor will rise. The Clerk will count. Gentlemen may be seated. Those opposed will rise. The Clerk announces the result as 52 for the amendment, and 85 against. The amendment is therefore declared lost. The question is upon the adoption of the section as amended. All in favor will say Aye, contrary, No. Carried. The section is adopted as amended. The Clerk will proceed to read the next section.

The Secretary — Section 9. The head of the department of public works shall be the superintendent of public works. He shall have the construction, care, maintenance and operation of the State's public works, including canals, highways, and all public buildings not assigned by law to any other department, and shall provide for the needs of the several State departments in engineering and architecture.

Mr. Wiggins — Mr. Chairman, I offer the following amendment.

The Chairman — Before that, Mr. Wiggins, the Clerk will read the pending Tanner amendment offered this morning. The Chair will then recognize Mr. Wiggins.

The Secretary — By Mr. Tanner: Page 4, line 11, before the word "assigned" insert the words "from time to time".

The Chairman — The Clerk will now read the amendment offered by Mr. Wiggins.

The Secretary — By Mr. Wiggins: Section 9, page 4, line 8, after the word "works", insert "He shall be elected at the same time and for the same term as the Governor".

Mr. R. B. Smith — I offer the following amendment.

The Chairman — The Clerk will read the amendment offered by Mr. Smith.

The Secretary — By Mr. R. B. Smith. Page 4, line 10, after the word "canals", strike out the comma and insert the word

"and". Also after the word "highways", strike out "and all public buildings". Same page, lines 12 and 13, strike out "architecture".

The Chairman — The Clerk will read the amendment offered by Mr. Blauvelt.

The Secretary — By Mr. Blauvelt: Page 4, line 10, strike out the words "including canals, highways, and all public buildings."

The Chairman — Are there any other amendments to be offered to this section. We might just as well have them here and read now.

Mr. Doughty — Mr. Chairman, I offer the following amendment.

The Chairman — Mr. Doughty offers an amendment which the Clerk will read. The Desk says that Mr. Landreth's amendment reached the Desk first. The Clerk will read Mr. Landreth's amendment.

The Secretary — By Mr. Landreth. Amendment No. 1. Page 4, line 8, strike out the words "the superintendent of public works" and insert in place thereof the words "the state engineer and surveyor who shall be an engineer of practical experience in his profession". Amendment No. 2. Page 4, line 13, after the period insert the following: "He shall exercise his powers and discharge his duties with respect to the policies, plans and contracts subject to the approval of the canal board". Section 9 of Amendment No. 831, introduced by the Committee on Governor and Other State Officers, when amended as proposed by Mr. Landreth would then read as follows: "Section 9. The head of the department of public works shall be a state engineer and surveyor who shall be an engineer of practical experience in his profession. He shall have the construction, care, maintenance and operation of the State's Public Works, including canals, highways and all public buildings not assigned by law to any other department, and shall provide for the needs of the several state departments in engineering and architecture. He shall exercise his powers and discharge his duties with respect to the policies, plans and contracts subject to the approval of the canal board".

The Chairman — The Clerk will now read the amendment offered by Mr. Doughty.

The Secretary — By Mr. Doughty. Page 4, line 8, after the word "have" insert the words "charge of".

The Chairman — Are there any other amendments to be offered to this section?

Mr. Wiggins — Mr. Chairman, the amendment proposed by me is very simple in language and you can readily appreciate what it means — the election and not the appointment. This is one of

the biggest offices to be filled in the State. The amount of money is large. The amount of money which this man will expend, Mr. Nicoll says, is mere chicken feed to him, but it is the chicken feed which makes the animal grow fat. When the man has this office to fill, when the Governor has this appointment to make, he will soon decide after he has made that appointment, who should be Governor. There will be the boss of the State of New York. He will not be the recognized elective boss, called the Governor, but he will be the man who extends his activities in every part of the State of New York where these great public works are being carried on, and he will soon say, "Bring down the delegates, and if you have not got them, as Mr. Smith says, go back and get them. The people who are in favor of elective offices will be against this, and that is the one thing in this Convention and the one thing which I think the people of New York State want, and that is that they will elect this great officer who is to take care and charge of his great public work. Reference was made to this, that the highways would soon be completed. They will never be completed in the State of New York. They may have the substructure and they may have the road laid out, but they will be a subject of maintenance as long as the State of New York exists. So long as that continues there will be the greatest opportunity for patronage, and it is only on patronage that the boss exists and it is with and through the boss that the Governor seeks his election. I believe that this is in the interest of the people of the State that it should be elective and not appointive.

Mr. Landreth — Mr. Chairman, this section has been pretty well prepared by the committee; it has been prepared after consultations and hearings, and I hesitate to point out what may seem to me imperfections or defects. The first relates to the personnel of the man at the head of this important bureau, the consolidation, and the second relates to the fact that there is no check or restraint whatever placed upon the man as there is at present over the engineer in the shape of control by the canal board. The functions which this proposed bureau or department covers are all engineering, and they relate to canals, highways, buildings, reservoirs and dams, river improvement, flood prevention, testing materials, boundaries and surverys. Every department of that work is of a very technical and important nature, of increasing magnitude; and it should be remembered that in the operations included in public works that the State of New York builds and maintains, but it does not operate. In that respect, it is unlike the railway or manufacturing concern, which builds its plant, maintains its plant, and then operates its plant. The State does not operate its plant. The railway manages its traffic, looks after

rates, looks after income and expenditures and operates its trains over its road. The State of New York does not do so. It builds and maintains, but the public uses it. Therefore, the only two remaining functions which the State has to perform is construction and maintenance. For the purpose of operating, for the purposes of the work of construction and maintenance, railways invariably employ engineers, and it seems to me the work of this department is of such a nature that it should be entirely handled by engineers. It may be said, and it has been said that the Governor should appoint an engineer for this important post. He may, and undoubtedly will desire to do so, but I ask you what Governor will be strong enough to resist successfully the strong influence brought to bear for appointment to this place of men who are not engineers. I believe that the ordinary Governor would desire, and I think we should protect him in the desire to have the right man, and to require that the man at the head of this important work shall be an engineer. It has been said that an engineer can be appointed as a subordinate in this office. I answer that that is not the grade of engineer that is desired for this important department. It is not a subordinate of that grade that you desire. The grade of engineer which should be obtained should be the best, and the position should be such so that men of weight could be selected, men of executive ability, wide discretion and absolute integrity to head the department. The movement to abolish the State Engineer brings to mind the fact that the State of New York has had a State Engineer ever since 1846. It has been a Constitutional office.

The Chairman — The Chair regrets to inform the gentleman that his time has expired.

Mr. Westwood — Mr. Chairman, I ask that unanimous consent be extended to Mr. Landreth that he continue his remarks.

The Chairman — If there is no objection, time is so extended.

Mr. Landreth — Mr. Chairman, I shall endeavor to be as brief as possible. This office has been in our State economy from the earliest colonial period. During the time up to 1846 the State had a surveyor-general and from 1846 on we have had a State Engineer and Surveyor as a constitutional officer. As everybody knows we have had some very excellent men at the head of this department. We had one man at the head of the department for 39 years, a man of great ability, in the person of Simeon DeWitt. We have also had Philip Schuyler and many others and it would seem as though it were established that the public building operations in this State should devolve upon engineers of ability, experience, strength, and discretion. And able as these men and their colleagues have been in the past this proposed department deserves

and requires even a better man for its head. As to the other defect, which in my opinion applies. The present bill does not place the superintendent of public works under the control of the canal board. It seems to me that in providing for this office that some such board as the canal board should be provided for in the way of a check. With the important functions to be performed, with its wide variety of discretion and judgment to be exercised, so far as deliberations, etc., go, this officer should be under the control of the canal board.

Mr. Stimson — In regard to the last question, I may say that the present Constitution contains no provision placing the superintendent of public works or the State Engineer under the control of the canal board or canal commissions; but that is a matter of statute, and it is the opinion of the committee that the supervision will continue. But the provision in question, which is Section 5 of Article 5, is now undergoing amendment by another committee, and I believe that you will hear from that report here very soon; but it is the view of the committee that that same supervision which now exists should continue, but we did not regard it as our function to say so explicitly in our amendment here, in view of the fact that it was the subject matter of another committee, the Canal Committee.

Mr. Landreth — Mr. Chairman, I am well aware that the present Constitution does not place this officer under the canal board, but it seems to me that with this enormously increased measure of influence and activity that the supervision should be mandatory and his work should be placed under the supervision of the canal board. I am also aware of the fact that the canal committee has taken action, or is about to take action, but that action does not place the officer under the canal board, and it is in this amendment that I think the measure should be made a part of the Constitution, or the provision, and I think that this officer, so far as it relates to the policy, plans and contracts, should be subject to the approval of the canal board.

Mr. Cullinan — Mr. Chairman, I cannot agree with Professor Landreth in respect to his amendment. Now, this amendment was drawn, as far as regards the discharge of the duties of Superintendent of Public Works in substantially the same language as in Article III of the Constitution. He is not there obliged to perform any of the duties to which the gentleman calls our attention unless it is by statute. Furthermore, I cannot see why in the world he should be obliged for instance, in the matter of the improvement of highways, and in the matter of the construction of public buildings, to submit his plans to the Canal Board. Now the department, of course, has come to be a great one. There is

nothing in here which will prevent the Governor from naming an engineer, but there may be some man with splendid administrative and executive ability who would discharge all of the duties of that great office with great fidelity and efficiency. I do not think that we should mention in here that the Superintendent of Public Works should be an engineer, and I do not believe that his plans, whatever they are, for instance, the highways, should be submitted to the Canal Board. The purpose of the whole bill has been in the line of efficiency and economy. As I said the other day, General Wotherspoon, when he was before the Committee and interrogated with reference to the powers of such office, said that he thought he might be able in the purchase of the one article of cement for the entire State to save, over the price that is now being paid by these several departments, enough to maintain the running of his office. It seems to me it is in the line of the greatest efficiency, and I cannot see why an office of that kind, no matter how fond I may be of having the people elect their officers — why a technical office which requires great consideration in the selection of such a one should be submitted to the people, who, under those circumstances, would not have the requisite information and intelligence to satisfactorily choose such an officer.

Mr. Blauvelt — My amendment would strike out in line 10 the words "including canals, highways, and all public buildings" so that the sentence would read: "He shall have the construction, care, maintenance and operation of the state's public works not assigned by law to any other department", etc. The purpose of my amendment is threefold, first, that the words "including canals, highways, and all public buildings" are not necessary to carry out the intent of the Committee, for the reason that the general description of "the State's public works not assigned by law to any other department" includes all public works not otherwise assigned. In the second place, as stated by the chairman of the Committee, it has been the purpose of that Committee not to assign particular powers and duties to a particular department. This seems to be an exception. I think the matter should be left entirely with the Legislature, and if I had my way I would strike out the entire sentence, beginning with the word "He" in line 8 and ending with the word "architecture" in lines 12 and 13. In the third place, and on this I would like the attention of the delegates, I do not think that the Superintendent of Public Works should be charged with supervision and jurisdiction over the highways of this State. The present highway department exercises, in my opinion, and performs a greater function of government than any other department of the State government. At the present time the Highway Department is charged with the completion of the State's $100,000,000 system of highways; in fact,

a system that will cost, with the contribution from the counties, probably $125,000,000. When completed, the Highway Department will have charge of the maintenance of nearly 12,000 miles of road, a system larger than any railroad corporation in this country, if not in the world. It will be charged with the expenditure of five or six million dollars annually in maintenance. It has to-day directly and indirectly under its control, I am told by the Highway Department, practically 27,000 employees. I say that the department is so important that it should not be placed under the jurisdiction of the Superintendent of Public Works, but should remain as it now is, an independent department. To carry out that purpose, if these words are stricken out, I propose to introduce later an amendment creating a Department of Highways.

Mr. Wickersham — I move that the Committee rise, report progress, and ask leave to continue its sitting until one o'clock, if necessary, under the five-minute rule, the final vote to be taken not later than one o'clock on this measure. I hope that that will be satisfactory to the members of the House.

Mr. Quigg — I move to strike out all after the word " again," and simply to ask leave to sit again.

Mr. J. G. Saxe — Mr. Chairman, let us at least sit to-night until we finish sub-division 9, seeing that we have these amendments pending. We can make another motion at any time, if necessary. Let us finish this one sub-division in any event, before we give up.

The Chairman — The question is on the amendment offered by Mr. Quigg to the motion offered by Mr. Wickersham.

Mr. Wickersham — Let me remind the House how much work we have to do this week. If the delegates will be indulgent and sit another hour, I think we will make material progress here. We have so much to do this week that I sincerely hope the House will remain in session another hour.

Mr. Brackett — Mr. Chairman, I move to amend by making the motion read that the Committee do now rise, report progress and ask leave to sit again to-morrow morning at nine o'clock.

Mr. Stowell — I sincerely hope that the motion of Mr. Wickersham will prevail. I think we ought to go ahead with this business and get as much of it finished to-night as possible.

The Chairman — The question is on the amendment of Mr. Brackett. Will Mr. Brackett kindly state his amendment again — that we rise, report progress and ask leave to sit again to-morrow morning at nine o'clock?

Mr. Brackett — Yes.

The Chairman — You have heard the amendment of Mr.

Brackett. All in favor will say Aye. Contrary No. The Chair is in doubt. Those in favor of Mr. Brackett's amendment will rise. The Clerk will count. Those opposed will rise. The amendment of Mr. Brackett is, manifestly, lost. The question now is on the amendment of Mr. Quigg. Will Mr. Quigg please re-state his amendment.

Mr. Quigg — My amendment is that we rise, report progress and ask leave to sit again.

The Chairman — You have heard the amendment offered by Mr. Quigg.

Mr. J. G. Saxe — I move an amendment to that amendment, that we sit until one o'clock, merely striking from Mr. Wickersham's motion that the final vote shall be taken at one o'clock. Mr. Wickersham's original motion was that we were to take the final vote at one o'clock.

Mr. Wickersham — Not later than one o'clock. I trust that my motion will prevail.

Mr. J. G. Saxe — I suggest striking out that much.

The Chairman — Until one o'clock?

Mr. J. G. Saxe — Mr. Wickersham accepts my amendment.

Mr. Wickersham — I do not. I speak for myself, Mr. Chairman.

Mr. Ostrander — Mr. Chairman, it seems to me that every one is convinced by the vote that the program is going right through and we might just as well vote one time or another. I move that we stop debate now and proceed to a vote.

The Chairman — The question is on the amendment of Mr. Saxe, which I will ask him to repeat.

Mr. J. G. Saxe — That the committee do now rise, report progress and ask leave to sit again until one o'clock under the five-minute rule.

The Chairman — That is understood by the Chair. You have heard the amendment by Mr. Saxe. All in favor will say Aye. Contrary, No. It is lost. The question now recurs upon the amendment of Mr. Quigg. That has been voted on?

Mr. Quigg — No, not yet.

The Chairman — The question is upon the amendment of Mr. Quigg, which is that we rise, report progress and ask leave to sit again. All in favor of the amendment will say Aye, contrary No. It is lost. The question now recurs upon the amendment of Mr. Wickersham that we rise, report progress and ask leave to sit until one o'clock.

Mr. Wickersham — The final vote to be taken not later than one o'clock and the five-minute rule to continue.

Mr. Coles — I don't know whether the delegates understand

what that motion means. I believe we have eleven more sections to be considered and, under the five-minute rule, one hour will allow just twelve speakers, or one person to speak on each section and one over. I think there is no necessity of taking this piecemeal. We ought to resolve to stay here until it is finished.

The Chairman — The question is on the motion of Mr. Wickersham. All in favor will say Aye. Contrary, No. It is carried.

(The President resumes the Chair.)

Mr. M. Saxe — The Committee of the Whole have had under consideration proposed amendment General Order No. 69, with some amendments, reports progress and ask leave to sit again to one o'clock.

The President — All in favor of granting leave will say Aye, opposed No. The leave is granted.

Mr. Rodenbeck — Mr. President, I desire to present a report of the Committee on Revision and Engrossment.

The Secretary — By Mr. Rodenbeck; From the Committee on Revision and Engrossment —

Mr. Austin — Mr. President, I move that the reading of the report be laid aside until to-morrow morning.

The President — The Committee on Revision and Engrossment is anxious to have this go to the committee to-night, it will be very brief.

The Secretary — to which was referred the Proposed Constitutional amendment, introduced by Mr. Marshall, No. 145, Int. No. 145, entitled: Proposed Constitutional amendment. To amend article fifteen of the Constitution with respect to the time when the Constitution is to go into effect. Also the proposed Constitutional amendment, introduced by the Committee on Future Amendments, No. 838, Int. No. 715, entitled, proposed Constitutional Amendment. To amend article fourteen of the Constitution, in relation to future amendments and revision of the Constitution, and permitting the validity of an election on a question submitted and the determination of the result of such an election to be contested by an elector in an action brought in the Supreme Court and by making provision with respect to questions coincidently submitted by a convention and the Legislature reports the same as examined, found correct and correctly engrossed.

ADOLPH J. RODENBECK,
Chairman.

which report was accepted and said proposed amendments ordered placed on the third reading calendar. Also proposed Constitutional Amendment, No. 804, Int. 711, introduced by the Committee on Suffrage, entitled proposed Constitutional Amendment, to amend section 4 of article 2 of the Constitution, in respect to

the enactment of election and registration laws reports the same with the following recommendations: Page 2, line 5, enclose with brackets the word "voters" and insert in italics after the last bracket the word "electors". Also proposed Constitutional Amendment, No. 699, Int. No. 290, introduced by Mr. R. B. Smith, entitled, Proposed Constitutional Amendment, to amend section 10 of article 3 of the Constitution, in relation to the powers of each House of the Legislature reports the same with the following recommendations: Page 1, line 5, after "proceedings" insert a comma enclosed with brackets. Page 1, line 6, after "members" insert a semicolon enclosed with brackets. Page 1, line 7, after "officers" and before the period insert a semicolon enclosed with brackets. Page 2, line 2, strike out "be" and insert in italics "become". Page 2, line 3, strike out "be" and insert in italics "become".

ADOLPH J. RODENBECK,
Chairman.

which report was accepted and said Proposed Amendment ordered reprinted and engrossed for a third reading. All in favor of the report will say Aye. Contrary, No. The report is agreed to and the amendments will go upon the third reading calendar. The Committee will now go into committee of the whole and resume consideration of the special order of the evening. Mr. Saxe will resume the chair.

(Mr. J. G. Saxe resumes the chair.)

The Chairman — The Committee will be in order.

Mr. Blauvelt — I had practically finished, Mr. Chairman, what I had to say on the subject of creating a department of highways. I simply want to emphasize what I consider the importance of this activity of the State. The enormous amount of work that the department of highways has to perform and will have to perform even after the highways are constructed.

Mr. Clinton — Mr. Chairman, I wish to say that Section 9 has had the consideration and enjoyed a hearing, that is, the substance of it, in the Committee on Canals as well as the Committee on Governor and Other State Officers and the only difference of opinion that has come to our knowledge between the Committee on Canals, or rather a member of the Committee on Canals, and the Committee on Governor and Other State Officers is that Mr. Landreth thought that a provision should be put into the Constitution requiring that the head of the department should be an engineer. I believe that no one on the Committee on Canals agreed with that proposition. I wish also to say that in establishing this department, the opinion of those of the Committee on

Canals, so far as expressed, has been that it was essential that the construction, care, maintenance and operation of the canals should be included, for the reason that they must be assigned to some department and not left to the Legislature to assign these functions, proposed in some other department which was not within the purview at all. The gentleman's amendment leaves it entirely to the Legislature. The provision creates the department of public works and makes the superintendent of public works the head, and it is strictly an engineering department. It adopts, practically, so far as the canals are concerned, the provisions of Section 3 of Article 5 of the Constitution which provides that the superintendent of public works shall have charge of the execution of all laws relating to the repair and maintenance of canals and all laws relating to the construction and improvement of canals except so far as an improvement shall be confided to the State Engineer and Surveyor subject to the control of the Legislature, he shall make rules and regulations regarding the navigation of the canals. In other words his powers are to be confided to this particular department of which he remains the head. The provisions in that section of the Constitution relating to the confiding to the State Engineer of part of the work of improvements becomes a nullity because the office of State Engineer is abolished. I have nothing to say in regard to highways except to make this suggestion, that if we are to have a department —

The Chairman — The Chair is requested to inform the delegate that his time is up.

Mr. Tuck — Mr. Chairman, all I desire to say is that an examination of this section, a careful examination of it will disclose that probably 80 per cent. of the work put under the superintendent of public works is engineering, and the gentleman who has just taken his seat has characterized this department as a department of engineering. Therefore, Mr. Chairman, I favor the amendment proposed by Mr. Landreth, that there shall be eligibility under this provision with practical experience as an engineer. That this gentleman as head of this department passes on the numerous propositions that come before him for contracts of all kinds when he sits in the canal board which I understand is to be retained and there represents the department of engineering. It seems to me that he should have at least some knowledge of the work which is within his authority. Therefore I believe for that reason he should have the eligibility of a practical engineering experience. Secondly, an examination of this plan was admirably drafted by the committee; they have retained every State officer but the office of State Engineer and Surveyor, an office which has existed since colonial times in the person of

the surveyor-general. I think some attention should be given to tradition in this office as well as other offices of the State.

Mr. R. B. Smith — Mr. Chairman, I introduced the amendment which I did to call attention to the bill that it is proposed in this section to take from the trustees of public buildings consisting of the Governor, Lieutenant-Governor and Speaker the duties which they now possess under the statute. These officers during the past five years have revised work amounting to over seven million dollars. I believe they have done their work well and efficiently. The proposed amalgamation can result in no economy, no efficiency, and I believe constitutes an unjust reflection upon the ability of these men, and the manner in which they have performed their duties.

Mr. Tanner — Mr. Chairman, I wish very briefly to state the position of the committee on this. I do not believe that these amendments should prevail. I don't believe that Mr. Landreth's should prevail making it compulsory upon the Governor to appoint an engineer. Leave that open. If he can get an engineer of great executive ability for the small salary which is paid, the Governor has of course the power to do so. But I think the committee was unanimous against making it mandatory to select an engineer. Now, I wish to call attention again to the testimony of General Wotherspoon, before the Committee on the Consolidation of these Departments. His testimony was that he was satisfied he could do it with one-half the personnel of the present three Departments. Think of the tremendous saving. Now these figures as to the great amount of patronage which is always held as a bogey over this assemblage's head. If the personnel is decreased by one-half your patronage is decreased by one-half. Now I have had from the civil service a list of the exempt, non-competitive and unclassified employees in those three departments and it amounts to 114 and the rest of these men, these 27,000 or 27,100 or whatever it is are laborers that are rushed to some place where a dyke or a canal or a bridge breaks or there is a certain repair. A great many of them are not even citizens. They are not on the State payroll, and the figures of Mr. Blauvelt are in a great many cases duplications — the men go back on the payroll.

Mr. Blauvelt — Mr. Chairman I certainly want to correct what might appear a misstatement. There are about 27,000 employees in the Highway Department, I said, directly or indirectly under the supervision or control, or I intended to say, of the Highway Department. Included in those are the employees of contractors, subject to supervision by inspectors and engineers of the department.

Mr. Tanner — Well, I think that takes away the whole question of patronage entirely. Those are employees of contractors. Now the expenses. Mr. Quigg asked me the other night if we did not spend two million dollars a week. At that time I did not know what the figures were. But the amount of Barge canal construction, and that will be over inside of a year or two, was only twenty millions last year and construction in the Highway Department was nine million, — construction in the Highway Department was $9,438,000. The construction in the Highway Department for maintenance, I assume, was a little over four million, and outside of the canal work, public work was only $79,000. So you see, after all, it is a very small department as compared with some of the departments in New York city. I trust these amendments will not prevail.

The Chairman — The question is on the amendment offered by Mr. Tanner. The clerk will read the amendment.

The Secretary — Section 9, page 4, line 11, before the word "assigned", insert the words "from time to time".

The Chairman — You have heard the amendment offered by Mr. Tanner. All in favor will say Aye. Contrary, No. It appears to be and is carried. The question now is on the amendment offered by Mr. Wiggins. The Clerk will read.

The Secretary — On page 4, line 8, after the word "works", insert "He shall be elected at the time and for the same term as the governor".

Mr. Wiggins — Mr. Chairman I suggest that we have a rising vote.

The Chairman — A rising vote is called for. All in favor of the amendment offered by Mr. Wiggins will rise and remain standing until counted. The gentlemen may be seated. Those against will please rise. It is apparent that the amendment is lost. The question now occurs upon the amendment of Mr. R. B. Smith. The Secretary will read.

The Secretary — On page 4, line 10, after the word "canals" strike out the comma and insert the word "and". Also after the word "highways" strike out the following: "and all public buildings". Same page, lines 12 and 13, strike out "and architect".

The Chairman — You have heard the amendment of Mr. Smith as read. All in favor will say Aye. Contrary, No. It appears to be and is lost. The question occurs on the amendment offered by Mr. Blauvelt. The Clerk will read.

The Secretary — By Mr. Blauvelt. Page 4, line 10, strike out the words "including canals, highways, and all public buildings".

The Chairman — You have heard the amendment offered by Mr. Blauvelt. All in favor will say Aye. Contrary, No. The amendment is lost.

The Clerk will read the amendment offered by Mr. Landreth.

The Secretary — Page 4, line 8, strike out the words "the superintendent of public works" and insert in place thereof the words "a state engineer and surveyor who shall be an engineer of practical experience in his profession". Page 4, line 13, after the period, insert the following: "He shall exercise his power and discharge his duties with respect to policies, plans and contracts subject to the approval of the canal board."

The Chairman — The question is on the amendment offered by Mr. Landreth just read. All in favor will say Aye. Opposed, No. It is lost. The question is now on the amendment of Mr. Doughty. The Clerk will read.

The Secretary — Page 4, line 8, after the word "have" insert the words "charge of".

The Chairman — You have heard the amendment offered by Mr. Doughty. All in favor will say Aye. Opposed, No. The motion is lost. The question now occurs upon the section as amended. All in favor will say Aye. Contrary, No. The section as amended has been adopted. The clerk will read the next section.

The Secretary — Section 10. The head of the Department of Health shall be the Commissioner of Health.

The Chairman — The question is called for. All in favor of the section as read will say Aye. Contrary, No. The section is adopted.

The Clerk will read the next section.

The Secretary — Section 11. The head of the Department of Agriculture shall be the Commissioner of Agriculture.

Mr. Stowell — Mr. Chairman, I offer the following amendment.

The Secretary — Page 4, section 11, line 17, after the period after the word "agriculture" insert "He shall be elected at the same time and for the same term as the term of the Governor".

Mr. Stowell — I call for a rising vote.

The Chairman — The Clerk will read the amendment by Mr. Bockes.

The Secretary — By Mr. Bockes: Page 4, line 17, after the period insert the words "He shall be elected at the same time and for the same term as the Governor."

The Chairman — The question then is upon the amendment offered by Judge Stowell.

Mr. Stowell — A rising vote.

The Chairman — A rising vote is called for. Those in favor will rise. Those opposed will rise. It is not necessary to count. The amendment of Judge Stowell is manifestly lost and is declared lost. The desk informs the Chair that the amendment offered by Mr. Bockes is identical with that offered by Mr. Stowell. The one offered by Mr. Stowell being lost, there is no necessity for considering the amendment by Mr. Bockes. The question is now upon the adoption of section 11. All those in favor will say Aye, contrary No. The section is adopted. The clerk will read the next section.

The Secretary — Section 12. The head of the department of charities and correction shall be the secretary of charities and corrections. He shall have the power of inspection and supervision of all State charitable institutions, State hospitals for the insane, State prisons and other State correctional institutions.

Mr. Burkan — I offer the following amendment.

The Chairman — Mr. Burkan offers the following amendment which the Secretary will read.

The Secretary — On page 4, line 18 strike out line 18, and 19 after the period and substitute in lieu thereof the following: "The department of charities and corrections shall be under the direction of a commission consisting of the president of the State board of charities, the president of the State commission of prisons, and the president of the State commission in lunacy. They".

Mr. Marshall — I offer the following amendment.

The Chairman — Mr. Marshall offers an amendment which the Clerk will read.

The Secretary — By Mr. Marshall: Strike out section 12, beginning lines 18 to 22, both inclusive, on page 4.

Mr. Foley — Mr. Chairman, I desire to offer an amendment in substance, separating the department of charities from the department of corrections. I am now drawing the amendment, and I desire to reserve the right to offer it later.

The Chairman — I recognize Mr. Foley for the purpose of offering an amendment when he has it ready.

Mr. Wiggins — I offer the following amendment.

The Chairman — The Clerk will read.

The Secretary — By Mr. Wiggins: Page 4, line 19, strike out all after the word "corrections".

The Chairman — Are there any other amendments except the amendment of Mr. Foley which is being prepared?

Mr. Wadsworth — Mr. Chairman, I move to strike out the last word in the clause, strike out the word "institution".

Mr. Chairman, there are no bureaus or commissions in the

State government, in my humble opinion, that could better be gathered together under one central figure than these three boards, the board of charities, the board of State prisons, the board of — the State hospital board.

Mr. Wadsworth — Mr. Chairman, they deal practically with one subject, that of charities in its very liberal sense; certainly the taking care of the insane and the feeble-minded is an act of charity. The State Board of Charities deals almost entirely with chartiable institutions, and certainly to-day the State's prisons and reformatories can be looked upon as charitable institutions. Their functions are to reform any young who have fallen by the wayside, and then there is an attempt even to reform and make good citizens of the confirmed criminal class. In my humble opinion, councils, meetings for joint consideration, and meetings of these boards for the consideration of further buildings, and for the consideration of uniform systems of accounts, uniform maintenance accounts, could be held, and they would lead to great and good results, and to give a concrete example, I do not believe that if this organization had existed a few years ago that the wilful extravagance mentioned by Mr. Tanner and confirmed by Mr. Smith would have occurred. Mr. Chairman, I withdraw my amendment and I hope the amendment proposed by the Committee will be adopted just as it stands.

Mr. Burkan — Mr. Chairman, and gentlemen of the Committee, I wish to call the attention of the Convention in connection with this provision to a bill introduced by Mr. Steinbrink, General Order No. 49, advanced to third reading, Int. No. 827, which provides that the Legislature shall create a State Board of Charities which shall visit and inspect certain institutions, except institutions that are to be visited by the commissioner in lunacy and the hospital commission. Now, this provision is in conflict with the bill advanced to third reading, because this bill provides for the visitation to all institutions, including the institutions under the jurisdiction, under the exclusive jurisdiction of the departments provided for in Mr. Steinbrink's bill. Furthermore, these three departments are distinct and separate institutions. They are not related to each other. The functions performed by the State Commission in Lunacy are entirely different from those performed by the State Board of Charities and different from those of the other commissions, and it was our idea that these three distinct departments should be provided for in this amendment so that each one can perform its functions and duty as indicated and outlined in the proposal by Mr. Steinbrink. Otherwise you are going to have two commissions in conflict with each other. Not only that, but you say the Department of Charities shall have

the supervision of all the departments. In the Steinbrink measure, you say they shall be confined to specific institutions, and the State Board of Lunacy and the other institutions shall have the supervision of other State institutions. I hope this will be taken into consideration in the final disposition of this article.

Mr. A. E. Smith — I desire to call the attention of the Convention to the fact that there is here being created an absolutely useless position. No power that he can be given by the Legislature can be anything else except an absolute duplication of the functions already assigned to officers of the State. I want to make a prediction to you, that in less than five years somebody can come here who sat in this Constitutional Convention and look over the payroll, and the traveling expense account of that particular official. It places it in the grasp and in the grip of the professional charity trust and they have no place in the State, and yet they are the worst when it comes to getting from this State money for places and for patronage and for traveling expenses. They have started little boards, little bureaus in this State, and when a man like Governor Hughes desired to do something for them and we men that have been around here, have seen these departments grow from nothing to big departments of the State. So it is with your secretary of charities and corrections. Watch the staff of visitors he will have and the power he will exercise in this State in a very few years. Why, it is absolutely worthless, and the man that votes for it will put in motion an office and create officeholders who will put a heavy hand on the State treasury in less than five years.

Mr. Steinbrink — It is because I believe that unintentionally a mistaken impression has been created that I speak at all on this proposal. To my mind, there is absolutely nothing in Section 12 that conflicts with the proposal which I introduced and which has already been advanced to third reading. That proposal speaks of management and fiscal control. In the original draft offered by the Committee on Governor and Other State Officers the language was this: The Department of Charities and Corrections shall be administered by the Secretary of Charities and Corrections, and when it was demonstrated to the President of this Convention and to the chairman of the Committee on Governor and Other State Officers that the use of the words "administered by" was in conflict with the proposal offered by me, it was made entirely clear, and frankly so, that the words "administered by" were not intentionally inserted. Now we have the redraft which is presented by the Committee on Governor and Other State Officers in which the words "administered by" have been omitted. There is nothing of administration, there is nothing of

management, there is nothing of control in Section 12. It provides that the secretary, the head of the Department of Charities and Corrections, shall have the power of visitation and inspection. Why shouldn't he? Why should there not be a connecting link between these three commissions and the Governor with whom they eventually must agree and to whom they must eventually go for their appropriations? Through whom can it better be done than through the secretary of the Department of Charities and Corrections? It is because of my belief that there is nothing in Section 12 which in the slightest degree conflicts with the proposal offered by me that I sincerely hope that this section will be passed and approved as offered by the Committee.

Mr. Bell — Why would it not agree with the view of Mr. Steinbrink and Mr. Smith if an amendment were offered to strike out the word "supervision." There seems to be some idea in the minds of certain members of the Committee on Charities that the word "supervision" may operate to interfere with the powers already vested under Mr. Steinbrink's amendment. If the word "supervision" was stricken out and the word "inspection" left, it seems to me that Mr. Smith's fears might be removed and Mr. Steinbrink's aspirations realized.

Mr. Root — Mr. Chairman, I should deplore very much any of the proposed changes in this article. I have a good deal of sympathy with what Mr. Smith said about the way that charities have been going, but I draw a different conclusion. I think what he said shows that it is necessary to have some man, some one man as inspector-general of these charities. There is no conflict at all, as Mr. Burkan supposes, between inspection by a man from headquarters and the inspection of the local boards. These various institutions, Mr. Chairman, some of them are admirably administered. The excerpts from the report of the department of efficiency and economy which the Chairman of the Committee on Charities showed me the other day and which I have now before me, by the courtesy of Senator Wagner, show a long series of cases of gross maladministration, wastefulness and profligacy in the expenditure of public moneys. It is proposed to strike out this section and leave these institutions to go their own way, spending more than one-quarter of the revenues of the State. It is proposed to make the Chairmen of these different boards who have permitted this profligacy to go on, the heads of the departments. It will all be worthless. The Governor cannot go about among the eight hundred institutions. He cannot himself see that the law is executed. There must be somebody between him and the institutions, somebody who will be close to him, somebody appointed by him whose sole business it will be to inspect these

institutions and take a view of this business as a whole, to learn from one institution how economically it is possible to support the inmates and see to it that the knowledge of that is brought to bear upon other institutions. The wording was changed, as has been stated here, from administration to inspection and supervision, taking the first part of the well-known phrase " inspection, supervision, and control," but not including the control. So the control of these institutions will be left where it is, so that we will have protection from an officer who can view this whole subject of the enormous expenditures that we are making and which have got to be paid sooner or later out of taxes, a man whose business it is to protect the State and see to it that wastefulness and extravagance are stopped.

Mr. Marshall — If I could see anything in this proposal which would bring about anything but conflict of jurisdiction, and confusion, I would not have made this motion to strike out section 12, but when I read this section in conjunction with section 11 of article 8, I can see that there would be three State Boards operating within the same orbit as this new official. The State Board of Charities is given the power to visit and inspect all institutions, etc., which are of a charitable, eleemosynary or correctional character. The State Commission in Lunacy, in addition to the new powers given to it by the Steinbrink amendment — the management and fiscal charge of the institutions for the care of lunatics, is to have the power to visit and inspect all institutions used for the care and treatment of the insane. The State Commission of Prisons is likewise to have power to visit and inspect all institutions used for the detention of sane adults, convicted of crime. Section 12 gives to the head of the Department of Charities and Corrections, who is to be known as the secretary of charities and corrections, the power of inspection and supervision of all State charitable institutions, State hospitals for the insane, State prisons, and other correctional institutions. The commissioner of accounts will also doubtless perform certain duties in that same direction which probably would relate to the fiscal management, and would probably perform the duties which are now performed by the fiscal supervisor. Therefore, we have a duplication of duties. We have three State boards which have their work set forth in the Constitution, and then we have this new officer who is to perform precisely the same duties, the duties of inspection and supervision. I can see nothing but trouble ahead. I can see nothing but controversy, conflict and litigation, and nothing which will redound to the welfare of the charges, who are sought to be provided for by these three State boards. Moreover, you are trying to make oil and water mix. You are putting under the same head charities

and corrections. The experience of the City of New York has been, after attempting to bring them under one head and one management, to separate them because they would not work together. Here you have the same officer, the same secretary, attempting to perform functions of inspection and of supervision with regard to those who are wards of the charitable institutions, the insane, and those convicted of crime, whose treatment requires entirely different consideration, whose needs are of an entirely variant character, and it would seem that, instead of aiding the cause of those who are the charges of the State, we are creating difficulties, the extent of which we cannot now foretell.

Mr. Hinman — Mr. Chairman, I cannot conceive that this committee, which has been making strenuous efforts toward providing for a simplification of the form of government in this State, could overlook the most complex element in the government of the State, which is the problem of dealing with our institutions. We would certainly live to regret that we had taken care of all those other branches of the government and had left untouched that which is costing the State 25 per cent. of its entire annual budget for one-half of one per cent. of the population of the State, and a problem which is growing wider and wider every day, and when we have been asked for a bond issue for twenty-five or thirty million dollars to increase the capacity in this instance, so that we will double the problem we have on our hands to-day. It is for the very reason that we want to get away from this duplication of boards and commissions and officers mentioned by Mr. Smith, that we need some central figure about which we can assemble jurisdiction and power to in some way unify the institutional business of the State, because it has many common problems, although each group of institutions has its own particular problems. The board of charities has only been given the power of inspection and visitation and never any administrative powers. The prison board has only been given the power of inspection and visitation, and has not been given any administrative powers, and we should have some central officer, who is going to be the central figure, the eyes of the Governor, the agent of the Governor, the head of the administration, to determine what is the best policy for the State to pursue. For the pilot of a vessel to have to call everyone from the captain to the cook to assist him in navigating a tortuous channel is not very much enlightened, and for the institutions of the State, for the benefit of them and the wards of the State, and for the conservation of the State's monied interests, we certainly need some such officer. I would like to go one step further, Mr. Chairman, but inasmuch as the Convention has not seen fit to go as far as I would like to have them, I certainly trust they will take this step.

Mr. J. G. Saxe — Mr. Chairman, I am very sorry that this amendment, the question of the charities of the State of New York, comes up at such a late hour. The delegates are inclined to rush it, and are anxious for the question. I sympathize with them very much, because of the long debate we have had, but this question of charities ought not to be skipped over quite so rapidly. I am a little bit diffident about my own position upon this particular article, because the plans which the Bureau of Municipal Research and I prepared provided for a secretary to co-operate with these three big charities of the State, but I want to say to this Convention that no sooner were these bills introduced in this House than I commenced to receive protests from the whole State, and I think I have heard in more certain tones from the people who are interested in the subject before the Convention, on this subject, than all other subjects put together. There is a strong protest against the creation of a traveling secretary to be at the head of the three big departments to exercise some kind of supervision — we don't know what — over the administration of their affairs. What we were trying to do when we prepared the original amendment, was to see if we could not correlate these departments in some way, and so we suggested this secretary. Now, that is distinctly unpopular with the people of the State; it is going to cause great confusion, and I must say I have got to go back on my own handiwork and be against it. The three alternatives I have here. Mr. Marshall suggests striking out the three altogether; several others suggest striking out the word "supervision," and leaving the secretary to wander without supervision, and the third is the suggestion of Mr. Burkan that the chairmen of the three commissions should be —

The Chairman — The gentleman's time has expired.

Mr. J. G. Saxe — Mr. Chairman, I can finish if I say two sentences more — then I will be through.

The Chairman — By unanimous consent of the Convention, no objection.

Mr. J. G. Saxe — I shall be inclined to agree with and favor Mr. Burkan's amendment, because there will be this one department with a supervisory head in the chairmen of the three different boards, who have their secretary and general department clerks and employees, who could do some intelligent central work, whereas the other two amendments might not lead to that result.

Mr. Low — Mr. Chairman, I offer an amendment which I would like to have read.

The Chairman — The clerk will read the amendment offered by Mr. Low.

The Secretary — By Mr. Low. After the word "of," line 18, in lines 18 and 19, strike out the words "charities and cor-

rections," and insert the words "public institutions." Line 19, after the word "of," strike out the words "charities and corrections" and insert the words "public institutions."

Mr. Low — My experience in the City of New York has satisfied me that the combination of the words "charities and corrections" is a most unfortunate one and I suggest that we call him, if we have this officer, the secretary of public institutions, and then let him visit and inspect State charities, the State hospitals, the prisons and other State correctional institutions. But let us avoid the combination "charities and corrections."

Mr. Root — May I ask Mr. Low a question? Whether he would wish that construed to Columbia University, which is a public institution?

Mr. Low — It is not a State public institution, Mr. President.

Mr. Bunce — How about the normal schools?

The Chairman — The Chair recognizes Mr. Foley. Has Mr. Foley sent his amendment to the desk?

Mr. Foley — I am hopeful that the suggestion that "corrections and charities" will be adopted. According to our experience in New York City, from 1897 to 1901 we had a combination of the two departments, charities and corrections, and there was so much discussed with that situation, with that combination, that every charity interest in New York demanded that the two be separated, and in the revision of the Charter of 1901, we separated charities from corrections. Now, contrast the situation there with misdemeanants in our reformatories and penitentiaries, and the fellows we have in Sing Sing, which you propose to class here with the inmates of the Ray Brook State Hospital for Tuberculosis. It was the same problem; the same question here as it was there. The question is whether the problem of correction is the same as the problem of charities, and I most certainly object to that classification of the patients of a State hospital, or a blind institution, or, as I say, the patients of the Ray Brook Tuberculosis Hospital, with the inmates at Sing Sing or any one of our State prisons. Now, no matter how much reform we have in prison conditions at the present time under Mr. Osborne or anybody else, you can never reconcile the administration of charity with the treatment of involuntary sufferers through sickness or otherwise with those who wilfully disobey the laws of the State, and, Mr. Chairman, I hope the Convention will consider even, if necessary, the operation of two offices, a secretary of correction and a secretary of charity. There is enough work for each one of them, and the Governor can have two arms instead of one.

The Chairman — The clerk will read the first amendment, that by Mr. Burkan.

The Secretary — On page 4, line 18, strike out lines 18 and 19 after the period, and substitute in lieu thereof, " the department of charities and corrections shall be under the jurisdiction of a commission consisting of the State Board of Charities President, and State Commissioner of Prisons, and Chairman of the State Commission of Lunacy.

The Chairman — All in favor of the amendment will say Aye. Those opposed, No. A division is called for. All in favor will rise. The clerk will count. Those opposed will rise. The desk announces 41 in favor; 75 against. The amendment is lost. The clerk will read the next amendment.

The Secretary — By Mr. Marshall: Strike out section 12, being lines 18 to 22, both inclusive, on page 4.

The Chairman — Division is called for. All in favor of the amendment offered by Mr. Marshall will rise. The Clerk will count. Those against will rise. The Secretary announces 37 for the amendment and 80 against. The amendment is lost.

Mr. Marshall — Mr. Chairman, I dispute the count.

The Chairman — Mr. Marshall, the Chair has not courage to do that.

The Clerk will read the next amendment.

The Secretary — By Mr. Foley. Page 4, line 19, strike out all after the word " corrections."

Mr. Foley — " And corrections." Strike out the words " and corrections " on both lines 18 and 19. Strike out in lines 21 and 22 " State prisons and other State correctional institutions."

Mr. Chairman — Just a moment, Mr. Foley. We have Mr. Wiggins' amendment.

Mr. Wiggins — Mr. Chairman, after listening to what Mr. Root said, I consulted with him, and he said the object sought by my amendment was accomplished by the amendment as it exists. I withdraw my amendment.

The Chairman — Mr. Wiggins withdraws his amendment. The question occurs on the next amendment in order. The Clerk will read.

The Secretary — By Mr. Low. Page 4, after the word " of," line 18, in lines 18 and 19, strike out the words " charities and corrections," and insert the words " public institutions." Line 19, after the word " of " strike out the words " charities and corrections " and insert the words " public institutions."

The Chairman — The question is on the amendment just read. Those in favor will say Aye. Contrary, No. It appears to be lost and is lost.

The Clerk will read the next amendment.

The Secretary — By Mr. Foley. On page 4, lines 18 and 19, strike out " and corrections," lines 21 and 22, strike out " state

prisons and other state correctional institutions." Insert a new section to be section 13. "The head of the department of corrections shall be the Secretary of Corrections. He shall have the power of inspection and supervision of all State prisons and other State correctional institutions."

The Chairman — The question is on the amendment of Mr. Foley which has just been read. Those in favor will say Aye. Contrary, No. It is lost. The question now occurs upon the section as printed. Those in favor will say Aye. Contrary, No. It is carried. The section is adopted as printed.

The Secretary — Section 13. The head of the department of banking shall be the superintendent of banks.

The Chairman — Question is called for. All in favor of the section will say Aye. Those opposed, No. Carried.

The Secretary — Section 14. The head of the department of insurance shall be the superintendent of insurance.

The Chairman — Question on Section 14 is called for. All in favor will say Aye. Contrary, No. It is carried, and the section is adopted as read.

The Secretary — Section 15. The head of the department of labor and industry shall be an industrial commission.

Mr. O'Connor — I offer the following amendment.

The Chairman — The Clerk will read the amendment proposed.

The Secretary — By Mr. O'Connor. To amend section 15, page 5, line 1. Strike out the words "department of labor and industry" and insert in place thereof "department of labor, workmen's compensation and industry". So the section shall read: "Section 15. The head of the department of labor, workmen's compensation and industry shall be an industrial commission."

Mr. O'Connor — I would ask if the chairman of the committee will accept the amendment.

The Chairman — Mr. O'Connor asks if the chairman of the committee accepts his amendment.

Mr. Tanner — The committee has handed up an amendment which I will ask the Secretary to read.

The Secretary — By Mr. Tanner. "Section 15. The head of the department of labor and industry shall be an industrial commission."

A Delegate — That is the same.

A Delegate — Read it again.

Mr. Tanner — New part in brackets.

The Secretary — "or commissioner as may be provided by law. The commissioner shall be appointed by the Governor by and with the advice and consent of the Senate."

Mr. A. E. Smith — Mr. Chairman, that meets the objection I made the other day to constitutionalizing the present industrial commission, but I must urge my objection to the confirmation of these officials by the Senate. Now, on page 6 of the bill, Section 20, which you will in due time meet and adopt, you give the Governor the absolute power of removal; the officer can be removed in his discretion. There is no reason at all for confirmation by the Senate. That is one department, above all, that the Governor ought to have control of entirely. You are giving him the power of removal, don't go only half way. Don't make a "fifty-fifty" of it. Give him the power to appoint whomever he pleases and don't make him consult with a majority of the Senate before he sends in a name for the important position of commissioner of labor or members of the industrial commission. This council of appointment that you have heard about to-day, you are writing right in here. The chairman the other day made quite a point when he reached over — I thought he was going to bite me — and wanted to know if I would support the proposition to do away with confirmation by the Senate. I told him, yes, and here we have it in the recommendation from the Committee to put it into this section. It has no business there. It does not belong there. It is putting the responsibility up to the Governor and not giving him the power.

Mr. Tanner — It was at least to meet what I thought was Mr. Smith's objection that I prepared this amendment. He has made one or two suggestions about this bill which I think are very valuable and they have been followed each time. This is one of them and it was to meet the objection that he had to "freezing" into the Constitution a particular commission that this was drawn. I think that I should explain this amendment in connection with Mr. Stanchfield's amendment, Section 20, where he proposes to strike out the phrase "by and with the advice and consent of the Senate" relative to appointments. It was the opinion of the Committee, after Mr. Stanchfield submitted the amendment on Friday or Saturday, at a subsequent meeting of the Committee, that they had no particular objection to that being done, but they preferred in departments such as the Department of Labor and Industry, where the compensation commission might be placed, or such a Department as the Public Service Commission or the Conservation Department, which have already been written into the Constitution — that there should be there a uniform rule. So, in Sections 15, 16, 17 and 18, referring, respectively, to the Departments of Labor and Industry, Education, Public Service, Conservation and Civil Service, this exception has been made to fit in with Mr. Stanchfield's amendment. That is what it is done for.

Mr. A. E. Smith — Is it done for no other purpose except to fit in with Mr. Stanchfield's amendment?

Mr. Tanner — No.

Mr. A. E. Smith — Mr. Stanchfield's amendment contemplated taking away entirely the power of confirmation.

Mr. Tanner — The Committee of the Whole has already passed on confirmation by the Senate, in two departments, public service and conservation, the action of the Convention in regard to those departments making the commissioners appointed by and with the advice and consent of the Senate. We also thought that the same type of departments, that is, with legislative or judicial functions, should have a different rule from the strictly executive departments, and we saw no objection there to laying a greater burden upon the Governor in making appointments.

Mr. Low — If the Industrial Commission is to consist of five members, one of whom is appointed each year, so that the term of each commissioner appointed by the governor overruns the governor's term, I see no objection to confirmation by the Senate; but if there should be but one commissioner and his term be coterminous with that of the governor, I think that the rule of responsibility means that the governor should appoint without confirmation by the Senate. The Public Service Commissions, the Conservation Department and the other commissions, they are all of the first class, and the terms of the officials overrun the term of the governor. You are not seeking there to make the governor responsible in the sense that you are in a purely responsible government. I should say that the proposal is all right for an industrial commission of five, with terms of five years, but it is all wrong in the other case.

Mr. Stimson — May I say that the effect of the action by the committee, as I understand it, on their proposal, would be to make a distinction between the purely administrative appointees of the governor and the appointees who occupy and fulfill judicial or legislative duties, which would comprise the last five; in other words, down as far as the bottom of page 4, the committee felt that the officers in question were purely administrative officers, standing in such relation to the governor that in the fulfillment of the principle of responsibility, they might well be appointed by him without confirmation by the Senate, whereas the remaining five were commissioners or officers who exercised quasi-judicial or quasi-legislative duties, where a different principle might well be held to apply. Four of those five have already been expressly made subject to confirmation by the Senate. Mr. Tanner's now proposed amendment applies merely to the Department of Labor and Industry and brings that into the same class with the other

four, leaving Mr. Stanchfield's proposed amendment to apply to the ten or dozen dealing with administrative officers.

Mr. A. E. Smith — I move to amend Mr. Tanner's amendment by striking out the words "by and with the advice and consent of the Senate."

Mr. Olcott — Are we to understand then from the committee that they will approve Mr. Stanchfield's amendment with regard to the first class? It seems to me that should be done. With the exception of the five mentioned on page 5, you are expecting to approve Mr. Stanchfield's amendment.

Mr. Tanner — I shall certainly offer no objection to it.

Mr. Olcott — That I believe in and that I was prepared to advocate, but I will not take any time to talk about it now.

Mr. O'Connor — The object I had in introducing that amendment was to try to fix the department in the Constitution and make sure that the Workmen's Compensation Commission was going to get in. We want to have that place fixed so that it cannot be moved around every session of the Legislature, the way it has been since it was put on the statute books. I cannot really see any objection. You have just consolidated three departments in section 12 and this amendment makes three departments in the Labor Department.

Mr. Curran — I don't know as to any of these amendments. It seemed to me that the others were framed up satisfactorily, but there are a hundred and one amendments offered which the ordinary layman doesn't know anything about. My first impression when I attended the session of the Committee on Industrial Interests and Relations was, when I found that the committee was practically unanimous in regard to the matter, it didn't seem to me that any more amendments were necessary. I began to think something was wrong when so many changes took place here and I am not so much in favor of accepting amendments to anything which I believe, in my own mind, is satisfactory. Mr. Chairman, I have just returned from the meeting of the workmen of the State. I was there about a week, but was sick and did not attend only a few of the sessions. That particular section has been considered satisfactory. Now unless I am satisfied in my own mind that the amendments as offered to that particular section are not going to turn it around so that it will mean nothing, I don't want to accept them. I would like to have somebody, Mr. Chairman, who will give the labor interests some legal advice so that you can believe that they are telling the truth.

The Chairman — I simply want to call your attention to Rule No. 642, that requests must be reasonable.

Mr. Curran — I agree with you. Now, I have asked the advice of members here, and I believe they could give me legal

advice but I got what they call in slang "the hook." I don't think that is justice, Mr. Chairman, and it is a matter in which I have been deeply interested, and I want to do what is right. I am not here to throw any bomb shells into this body, but I believe the laboring interests ought to have some recognition, and I believe they are justly entitled to it, and I am urging this for your consideration to which they are entitled. If this new amendment, Mr. Chairman, if I can be sure that they mean what they say, it will be satisfactory as far as the working people of the State of New York are concerned, and I speak for 120,000 working people at this particular time.

Mr. Blauvelt — Are they satisfied?

Mr. Curran — They are satisfied if the department will be protected, and I have been informed that the Department of Labor was losing its identity, and if the Labor Department has been losing its identity from year to year by ripping in and ripping out, and I ain't particular whom you rip in or rip out, I am not so interested in that as I am in presenting this particular —

The Chairman — The gentleman's time has expired.

Mr. Parsons — The hearings before the Committee on Industrial Interests and Relations would seem to be adverse to freezing into the present Constitution the present Industrial Commission which was provided for by legislation this year, and which is only now organizing. In order to avoid the semblance of freezing it into the Constitution the Committee on Governor and Other State Officers has submitted the amendment which Mr. Tanner has presented. So that it still leaves open to the future the question of whether the head of the department shall be a commission or a commissioner. It has not been sufficiently tried, but presumably all of the work which is now under the Industrial Commission will remain under this department.

The Chairman — The question is on the amendment offered by Mr. O'Connor. The clerk will read the amendment.

The Secretary — By Mr. O'Connor. Amend section 15, page 5, line 1. Strike out the words "Department of Labor and Industry" and insert in place thereof "Department of Labor, Workmen's Compensation and Industry," so that the section shall read: "Section 15. The head of the Department of Labor, Workmen's Compensation and Industry shall be an industrial commission."

The Chairman — The question is on the adoption of the amendment offered by Mr. O'Connor. Are you ready for the question? All in favor will say Aye, contrary, No. The amendment is lost. The question occurs upon the amendment offered by Mr. Tanner. The clerk will read the amendment offered by Mr. Tanner.

The Secretary — By Mr. Tanner. Strike out section 15 and insert the following substitute: "Section 15. The head of the Department of Labor and Industry shall be an industrial commission or commissioner, as may be provided by law. Commissioners shall be appointed by the Governor, by and with the advice and consent of the Senate."

Mr. A. E. Smith — Mr. Chairman, will my amendment be read now?

The Secretary — Mr. Smith moves to amend section 15 by striking out the words "by and with the advice and consent of the Senate."

The Chairman — The question is upon the amendment offered by Mr. Smith. Are you ready for the question? All in favor will say Aye, contrary, No. The amendment appears to be lost. It is lost. The question is now upon the substitute for Section 15, offered by Mr. Tanner. Are you ready for the question? All in favor will say Aye, contrary, No. The substitute is adopted.

The Clerk will read Section 16.

The Secretary — Section 16. The department of education shall be administered by the University of the State of New York. The chief administrative officer of the department shall be appointed by the Regents of the University.

The Chairman — The question is on the adoption of Section 16 as read. All in favor will say Aye, contrary No. The section is adopted as read.

The Clerk will proceed to read Section 17.

The Secretary — Section 17. There shall be two public service Commissions. Commissioners shall be appointed by the governor by and with the advice of the senate. The governor may remove any commissioner for cause after service upon him of a written statement of the alleged cause and an opportunity to be heard thereon. Until the legislature shall otherwise provide, the existing commissions are continued with the jurisdiction and powers at present vested in them.

Mr. Tanner — This amendment is in the exact form of the amendment adopted a few days ago, which I think went to third reading.

Mr. Wickersham — There is one word different from the amendment adopted a few days ago, namely the word "commissions" in line 13 was "commissioners" in the amendment as adopted a few days ago. I intend on third reading to move to correct that word to conform to the present bill before us. It was "commissioners" as originally drafted, because the amendment as proposed read: "There shall be one or more public service commissions. Commissioners shall be appointed by the Governor" and so forth, and then it ran along until line 13, and

read "Until the legislature shall otherwise provide, the existing commissioners are continued" and so on. In this amendment it is, I think, correctly stated, "commissions."

Mr. Cobb — Mr. Chairman, I would like to ask the gentleman if under the existing provisions the present commissioners would be continued in office.

Mr. Wickersham — The provision would be that "until the legislature shall otherwise provide, the existing commissioners are continued with the jurisdiction and powers at present vested in them," and I assume that would continue the commissions and the commissioners composing them, until those commissioners were removed under the provisions of the constitution and law.

Mr. Cobb — That is, it continues in office the existing commissioners.

Mr. Wickersham — Surely.

Mr. A. E. Smith — Mr. Chairman, I move to strike out the words "by and with the consent of the Senate," on lines 8 and 9. The reason given for the Department of Labor was that it performed quasi-judicial functions. So does the Department of Health. The Department of Health, presided over by the Health Commissioner and the Health Council, have the power to make rules and regulations that have the effect of law, they being treated as misdemeanors. It was also said of the Department of Taxation, and the reason why it consisted of three members was because it was quasi-judicial. I am going to move this amendment to this and to the other one.

Mr. Wickersham — May I call the attention of the gentleman to the fact that we have passed on this language in Committee of the Whole a day or two ago in the discussion of the public utility proposition.

Mr. A. E. Smith — I want to inform the gentleman that was before we got to this question of the confirmation by the Senate, and I am in favor of and I wish to confess that I am the one who wants to give all the power to the governor.

Mr. Quigg — This bill here, or when the Public Service Commissions bill comes up there certainly ought to be something said about the jurisdiction of these commissions, or else the very evil that this bill is suggested for, that is, to prevent ripper legislation, will be rampant with regard to these public service commissions. This bill simply says there shall be two public service commissions. They ought to have some jurisdiction. Are they to deal with the very same question? Is there not any territorial jurisdiction to be defined? Is their territorial jurisdiction to be the same?

Mr. Stimson — Does the gentleman understand that this entire matter has been before the Committee of the Whole twice and decided exactly in this language.

Mr. Quigg — Certainly. That does not make it any better. That leaves the fact just the same as I say it is, that if you don't say something on the subject of jurisdiction, every time one or the other party gets in, you will be ripped out with ripper legislation again and again, and it will be done, too. I just want to point that fact out to you.

The Chairman — The question is on the amendment offered by Mr. Smith. The Clerk will read.

The Secretary — By Mr. A. E. Smith. Page 5, line 8, after the word "governor" strike out the words "by and with the advice and consent of the senate."

The Chairman — You have heard the amendment offered by Mr. Smith. Are you ready for the question? All in favor will say Aye, contrary No. It appears to be and is lost. The amendment is lost. The question now occurs upon the adoption of the section, there being no further amendments. Are you ready for the question? All in favor of the section will say Aye. Contrary No. The question seems to be and is carried. The section is adopted.

The Clerk will read Section 18.

The Secretary — Section 18. The department of conservation shall be under the direction of the conservation commission.

Mr. Bunce — I offer the following amendment.

The Chairman — Mr. Bunce offers the following amendment to Section 18, which the clerk will read.

The Secretary — By Mr. Bunce. To amend section 18 as follows: On line 16, page 5, strike out the word "the" and insert in place thereof the word "a." Strike out the period and on the same line, after the word "commission" add the words "or commissioners."

Mr. Bunce — My reason for offering that amendment is that the Proposed Amendment of the Conservation Committee has not been passed upon, the Committee has not passed on the subject, and I am not sure that it will be in its present form, and my amendment will take care of it, if the Proposed Amendment of the Conservation Committee is not adopted.

The Chairman — The question is on the amendment offered by Mr. Bunce. All those in favor of the amendment say Aye. All those opposed No. The amendment seems to be lost. It is lost. The question now occurs upon the section as printed. Are you ready for the question? All those in favor will say Aye. Opposed No. It is carried. The section is adopted as read and printed.

The Clerk will read Section 19.

The Secretary — Section 19. The Department of Civil Serv-

ice shall be under the direction of a civil service commission consisting of three commissioners. They shall be apppointed by the Governor, by and with the advice and consent of the Senate, for terms of six years, and shall be so classified that one shall go out of office at the end of every two years. Any commissioner may be removed by the Governor on charges after an opportunity to be heard. The commission shall take care that the provisions of this Constitution relating to civil service and of laws enacted thereunder are faithfully observed and enforced.

Mr. Rhees — This section is in accord with the views of the Committee on Civil Service; that the Committee on Civil Service recommended the incorporation of the Civil Service Commission in the group of governmental offices because it believes that it is very desirable to have that Commission fixed by the Constitution as one of the agencies of government.

The object of the civil service provision of the Constitution, as I understand it, is to provide that, excepting the higher positions in the service of the State, the tenure shall be secure and the appointment shall be for merit. There has been some criticism of Governors in recent years, because of their juggling with the civil service, by bringing pressure upon the Commission to cover positions from the exempt into the competitive class and vice versa. We believe that by putting this provision into the Constitution, Governors will be less inclined to make light with the work of the commission and with the personnel thereof. The law of 1913 provided for a commission with overlapping terms, which has been adopted by the Committee, and the provision here indicates that character of appointment; that they should be appointed by the Governor by and with the advice of the Senate; and that they shall be removable only on charges after an opportunity to be heard. It is our judgment that in this way the civil service, in its administration under the commission, will be more secure and less liable to variations and juggling.

Mr. A. E. Smith — Mr. Chairman, I offer the same amendment.

The Chairman — Mr. Smith offers the same amendment. The Clerk will read.

The Secretary — Page 5, line 19, after the word "Governor" strike out the words "by and with the advice and consent of the Senate."

Mr. Dooling — Mr. Chairman, I move that the words on line 24 "Take care that" be stricken out and the word "enforce" inserted instead, and that all of the section after the word "thereunder" on line 1, page 6, be stricken out, so that this last

sentence shall read: "The Commission shall enforce the provisions of this Constitution relating to civil service and of laws enacted thereunder."

Mr. Wickersham — Mr. Chairman, I hope that the amendment will not prevail. I think it loses sight of the functions of the State Civil Service Commission in its relation to the local civil service commissions. The State Civil Service Commission can exercise a general supervision over all the civil service law, but it cannot itself go down into the municipalities and directly enforce the law there as this amendment would compel them to do.

Mr. Marshall — I would like to ask a question, for information. I would like to know what the effect of this amendment would be upon the municipal civil service board; whether or not this State civil service board would have control over this whole subject in municipalities.

Mr. Wickersham — I should think it would have a general supervision. If the amendment which is offered were adopted, of course it would practically supersede the municipal body and that is the reason I objected to Mr. Dooling's amendment. The word "enforced" would simply devolve upon it general supervisory powers.

Mr. Marshall — There was no intention —

Mr. Wickersham — None whatever. That is the reason I objected to the amendment.

While I am on my feet, I am going to move that the provisions regarding the removal by the Governor shall be made to correspond with those in Section 27. That is to say, instead of the line reading "any commissioner may be removed by the Governor on charges," etc., that there be inserted "the Governor may remove any commissioner for cause after service upon him and written statement of the alleged cause and an opportunity to be heard thereon." So as to make the two sections conform in that particular. I see no reason why that should not be done.

Mr. Tanner — I will accept that, Mr. Wickersham.

Mr. Bernstein — Mr. Chairman, it seems to me there is some objection to the words "shall take care that", not in the sense in which General Wickersham urged that they should be left into this sentence, but because of the fact that it does not use the best language, and I suggest —

Mr. Wickersham — Will the gentleman yield, one moment. The language is that of the Constitution of the United States and the Constitution of the State of New York also —

Mr. Root — It is the language of the United States Constitution.

Mr. Wickersham — Yes. "He shall take care that the laws

shall be duly executed" and the language put upon the President of the United States, in the Constitution, which has been generally regarded as the best language for more than 120 years.

Mr. Bernstein — I was going to suggest a change to read, "Secure the observance and enforcement of the provision of this Constitution, relating to civil service and of laws enacted thereunder." I think that would make the sentence read better and at the same time secure what General Wickersham wanted to secure, that is the strict observance that the city and local civil service commissions would do their duties.

The Chairman — The question is now on the amendment which has been offered. The Clerk will read the first amendment by Mr. A. E. Smith.

The Secretary — By Mr. A. E. Smith. On page 5, line 19, after the word "Governor" strike out "by and with the advice and consent of the Senate."

The Chairman — The question is on the amendment offered by Mr. Smith. All in favor will say Aye. Contrary No. The amendment is lost. The Clerk will read the next amendment.

The Secretary — By Mr. Dooling. On page 5, line 24, strike out the words "take care that" and insert in place thereof "enforced". And on page 6, line 1, after the word "thereunder" strike out the remainder of the sentence.

The Chairman — You have heard the amendment offered by Mr. Dooling. All in favor will say Aye. Contrary No. The amendment is lost. The Clerk will read the next amendment.

The Secretary — By Mr. Wickersham. On page 5, line 22, strike out the words "any commissioner may be removed by the Governor on charges after an opportunity to be heard." And insert in place thereof the following: "The Governor may remove any commissioner for cause after service upon him of a written statement of the alleged cause, and opportunity to be heard thereunder.

The Chairman — The question is on the amendment by Mr. Wickersham. All in favor will say Aye. Contrary, No. The amendment seems to be carried, and is carried.

The Chairman — The question now occurs on the section as amended. Is there any other amendment? The proposition of Mr. Bernstein I understand is merely a suggestion.

Mr. Bernstein — I withdraw that, Mr. Chairman.

The Chairman — It is not offered as an amendment, as I understand it, just a suggestion. The question now occurs on the section as amended. Those in favor will say Aye. Opposed, No. The section is adopted.

The Clerk will read the next section.

The Secretary — Section No. 20: The heads of all the departments and the members of all commissions unless otherwise provided for in this Constitution shall be appointed by the Governor by and with the advice and consent of the Senate and may be removed by the Governor in his discretion.

Mr. Stanchfield — It is a wise man who made the observation that all things come to him who waits, and in view of the attitude taken by the chairman of the committee having this amendment in charge, I move the adoption of the amendment to this section introduced by me the other day to the effect that on lines 5 and 6 the language "by and with the advice and consent of the Senate" be stricken out, and in line 6 "the Governor" be stricken out, and in lieu thereof be inserted the word "him".

The Chairman — The question is on the amendment offered by Mr. Stanchfield. Are you ready for the question? All in favor will say Aye. Contrary No. It appears to be carried. It is carried. The question now recurs upon the adoption of section 20 as amended. All in favor will say Aye. Contrary No. It appears to be and is carried. The section is adopted. Section 21. The Clerk will read.

The Secretary — Section 21. The Attorney-General and Comptroller may be removed from office by impeachment in the same manner as the Governor or they may be removed by the Senate by a vote of two-thirds of all the members elected thereto upon the recommendation of the Governor, stating the grounds therefor. A vacancy in the office of Attorney-General or of Comptroller shall be filled for the remainder of the term at the next general election happening not less than three months after such vacancy occurs. Until the vacancy be so filled by election, the Governor, or if the Senate be in session, the Governor by and with the advice and consent of the Senate, may fill such vacancy by appointment which shall continue until the first day of the political year next succeeding the election at which such office may be filled.

The Chairman — The amendment offered by Mr. Sheehan will now be read.

The Secretary — By Mr. Sheehan. Amend section 21, by striking out the following words on lines 10, 11 and 12: "or they may be removed by the Senate by vote of two-thirds of all members elected thereto, upon the recommendation of the Governor, stating the grounds therefor."

The Chairman — The question is on the amendment offered by Mr. Sheehan.

Mr. Tanner — The amendment, I think, was offered for the reason that there seemed to be a discrimination in the matter of

removal by the Senate on a two-thirds vote, between the Comptroller and the Attorney-General, and the appointed heads. When I saw that, I was inclined to think that should be done, but I understand that another amendment is to be offered to the next section, making the appointive heads of departments removable by the Senate on a two-thirds vote, upon stating the grounds therefor. I am perfectly willing that both appointed officers and the Attorney-General and the Comptroller be placed on the same basis, but it does seem to me that instead of restricting the power of removal either by impeachment or by a two-thirds vote, that should be extended, and therefore I hope that Governor Sheehan's amendment will not prevail, although I am perfectly willing to say at the same time that I think the subsequent amendment intended to be offered to section 22 should properly be inserted.

Mr. Sheehan — The object of this Proposed Amendment is that, as the Attorney-General and Comptroller are to be elected, if they are to be removed from office, they should be impeached the same as the Governor, and that no authority should be given to the Governor to recommend to the Senate the removal of those elected officers by a two-thirds vote. In other words, it does seem to me and to many members who have discussed the question that we have now confined the elected State officers to a very few, and that, if we are going to remove those who have been elected by the people, we ought to treat them all alike. If we are going to impeach the Governor, let us impeach the others; if we are going to remove the others by a two-thirds vote of the Senate, then we should remove the Governor by a two-thirds vote of the Senate. All the elected officers of the State ought to be treated alike. That is the object, Mr. Chairman, of that particular amendment.

Mr. Root — I want to make the suggestion to Mr. Tanner that it would be quite absurd to put into section 22, regarding the removal of appointed heads of departments, a provision that they may be removed by the Senate upon the recommendation of the Governor, stating the ground therefor, because the Governor can remove them without making any recommendation to the Senate, so that if you are going to make the two sections conform you would have to do it in the manner suggested by Governor Sheehan, by striking out this provision from section 21. Why is not that the better way?

Mr. Olcott — Mr. Chairman, I was about to call attention to section 20 and make the same suggestion that President Root has already made. I was also going to say that it has struck me that the two State officers who are to be elected, aside from the Governor and Lieutenant-Governor, should be dismissed from office in the same fashion. Equally with the Governor and Lieutenant-Governor, the Comptroller and Attorney-General under

this proposition will be there by the votes of the people, and should be removed in the same way.

Mr. Tanner — I think, Mr. Chairman, that that is rather a distinction and I am willing to accept Mr. Sheehan's amendment.

The Chairman — The question is on the amendment offered by Mr. Sheehan. The Clerk will read.

The Secretary — Amend section 21, by striking out the following words in lines 10, 11 and 12: "or they may be removed by the Senate by vote of two-thirds of all the members elected thereto, upon the recommendation of the Governor, stating the grounds therefor."

The Chairman — You have heard the amendment offered by Mr. Sheehan which has just been read. Are you ready for the question? All in favor of the amendment will say Aye, contrary No. It seems to be and is carried.

Mr. R. B. Smith — Mr. Chairman, I offer the following amendment.

The Chairman — Mr. R. B. Smith offers the following amendment which the Clerk will read.

The Secretary — By Mr. R. B. Smith, page 6, line 20, after the word "filled" insert "The compensation provided by law for each such officer shall not be increased or diminished during the term for which he shall be elected and he shall not receive to his use any fees or perquisites of office or other compensation."

Mr. R. B. Smith — That provision is in the Constitution as to elective officers. There is no reason why it should not be continued.

The Chairman — The question is on the amendment offered by Mr. Smith. All in favor will say Aye, opposed No. The Chair is in doubt. All in favor will rise. The doubt of the Chair has been removed and the amendment has been adopted.

Mr. A. E. Smith — Mr. Chairman, I would like to have the record show very clearly that it was Mr. R. B. Smith that got that in there.

The Chairman — The question is now on the section as amended. All in favor will say Aye, opposed No. It is carried. The section as amended is adopted.

The Secretary — Section 22. All appointed heads of departments shall be subject to impeachment in the same manner as the Governor. A vacancy occurring in a board or commission appointed by and with the advice and consent of the Senate for a fixed term shall be filled for the unexpired term in the same manner as an original appointment, except that a vacancy occurring or existing while the Senate is not in session shall be filled by the Governor by appointment for a term expiring at the

end of twenty days from the commencement of the next meeting of the Senate.

The Chairman — To which Mr. Sheehan offers an amendment, which the clerk will read.

The Secretary — Amend section 22 by adding after the word "Governor" on line 22, the following: "or they may be removed by the Senate by a vote of two-thirds of all the members elected thereto."

Mr. Sheehan — I do not want to discuss the question. It seems to me, Mr. Chairman, that it is a self-evident proposition.

The Chairman — Are there any other amendments to this section? If not, the question occurs upon the amendment offered by Mr. Sheehan. Those in favor will say Aye, contrary No. It seems to be and is carried. The question now recurs upon the adoption of the section as amended.

Mr. C. Nicoll — I call attention to an error, owing to the fact that the amended section 20, on the top of the page now reads that if a vacancy occurs while the Senate is not in session — you have stricken out the requirements in many cases requiring confirmation by the Senate.

The Chairman — The question is upon the adoption of the section as amended. All in favor will say Aye, opposed No. The section as amended has been adopted.

Mr. Latson — Is not that the last section?

The Chairman — That is the last section.

Mr. Bernstein — Mr. Chairman, I call attention to the fact that we have not yet adopted section 1.

The Chairman — It is unnecessary; the Chair knows it.

Mr. Wiggins — Mr. Chairman, before you do that I would like to offer an amendment, to be known as section 23.

The Chairman — I think, in view of the fact that we have not yet considered section 1, we ought to consider all of the sections of the bill before we take up additional sections. I therefore ask Mr. Wiggins to withhold his amendment until we consider section 1.

Mr. Wiggins — I will be glad to withhold it.

Mr. Olcott — I call the attention of the committee to the fact that the word "justice" in the first line of the enumeration should be changed to "law" in accordance with the vote already taken.

Mr. Wickersham — So moved.

The Chairman — Mr. Olcott, do you offer that amendment?

Mr. Olcott — I do, changing the word "justice" to the word "law" in line 5 of page 1. I also wish to suggest, if the committee concur, that the department of accounts should be pushed up, just under the department of finance, as that is the order in which it is defined in the subsequent paragraph. I concede that

is unimportant, but as a matter of form, it would seem to be desirable. Do you agree to that, Mr. Tanner?

Mr. Tanner — I think that is a proper disposition.

Mr. Olcott — I offer those two amendments.

The Chairman — Are there any other amendments to section 1?

Mr. Marshall — Mr. Chairman, I have an amendment but I have not prepared it. It seems to me that this entire article, now that we have adopted the principle, can be placed in much more compact form, and avoid a great deal of repetition. Perhaps it would be proper to suggest this to the Revision Committee, after the matter has gone into their hands. For instance, it would seem to me to be utterly useless to me to have this childish — I don't say that as to the idea, but as to the method of repetition — the department of justice, the department of finance, the department of the treasury, and so on, in a sing-song way. It does not belong in the constitution. We could very well dispose of that by saying there shall be the following civil departments in the state government: First, a department of justice; second, of finance; third, of the treasury, and so on, and then incidentally indicate who shall be the heads of those departments. For instance, we might have all those departments have a commissioner or superintendent at the head, saying that there shall be those departments, the head of which shall be a superintendent or commissioner. I merely call attention to that in order to save probably one-half of the length of the article.

The Chairman — There is no question but what the Committee on Revision can make any changes as to form which are not of substance.

Mr. Marshall — I will be very glad to confer with the members of the committee and give them my views on the subject, if they so desire. It is too late to do it to-night, but I think we can save perhaps 350 words in this article.

The Chairman — Are there any further amendments to section 1? The question is on the amendments offered by Mr. Olcott to section 1, which the clerk will read.

The Secretary — Page 1, line 5, strike out the word "justice" and insert in the place thereof the word "law". On page 1, line 9, strike out the words "a department of accounts" and insert the same after the word "finance" in line 6.

Mr. Olcott — In a new line.

The Chairman — You have heard the amendments as read. All in favor will say Aye, contrary, No. It is carried. The question now is upon the section as amended. All in favor will say Aye, contrary, No. It is carried and section 1 is adopted.

Mr. Latson — I offer an amendment to this article to be known as section 23.

The Chairman — Mr. Latson offers an amendment to this article to be known as section 23. The Clerk will read.

The Secretary — By Mr. Latson. After line 4, page 7, insert the following: "Section 23. The provisions of this article shall not apply to the military or naval functions of the State."

Mr. Latson — Mr. Chairman, may I say just a word in regard to that? The provisions of this article would affect the custody of sixty armories and arsenals, 34 rifle ranges, the camp ground, etc., all of which are in charge of an armory commission which is composed of the major-general, the adjutant-general of the State, the commanding officer of the naval militia and the commanding officers of each of the brigades.

Mr. Blauvelt — Are they officers of civil departments of the State?

Mr. Latson — The word "civil" has been called to my attention, Mr. Chairman, and I have been in consultation with members of the committee concerning its effect. It has been thought wise to settle all doubt by inserting a section of this character. It is the intention to set at rest any question with reference to the jurisdiction of the armory commission, of courts martial and of other bodies of like nature.

The Chairman — You have heard the amendment offered by Mr. Latson. The Clerk will read it again for the information of the Committee.

The Secretary — Page 7, after line 4, insert the following: "Section 23. The provisions of this article shall not apply to the military or naval functions of the State."

The Chairman — Are you ready for the question?

Mr. Tanner — Mr. Chairman, I think that is a proper amendment. I doubt its necessity there, but we can deal with it on third reading if it is superfluous.

The Chairman — The question is called for. All in favor of the amendment offered by Mr. Latson will say Aye, opposed, No. The Chair is in doubt. Those in favor of the amendment will please rise. Those opposed will rise. The desk announces that there are 54 votes for the amendment and 57 against it. The amendment is therefore lost.

Mr. Wickersham — Mr. Chairman, I move the adoption of the article as amended.

Mr. Wiggins — I have offered an amendment.

Mr. Blauvelt — Before action is taken on that amendment, I would like to ask the Chairman of the Committee what will become of the present section 8 of the Constitution, in regard to

the office of weighing, gauging, etc., of merchandise? I think that it is unnecessary in the Constitution to continue that provision.

Mr. Root — Mr. Chairman, there is an amendment in general orders which takes care of that.

The Chairman — The Clerk will read the amendment offered by Mr. Wiggins.

The Secretary — By Mr. Wiggins. Page 7, add a new section, to be known as section 23, to read as follows: "Section 23. The Legislature shall provide for submission to the electors of the State at the general election in the year one thousand, nine hundred and sixteen, one question to be voted upon on a separate ballot, as follows: Shall the offices of State Treasurer, Secretary of State, and Superintendent of Public Works be hereafter filled by election? If a majority of votes upon the question shall be in the affirmative, the said officers shall hereafter be elected at the same time and for the same term as the Governor, but if a majority of votes upon the question shall be in the negative, the offices shall be filled by appointment as provided in this article."

Mr. Wiggins — This follows the provision in the Constitution of 1867 with respect to the judiciary article. There they wanted to have the people pass upon the question as to whether the judiciary should be appointed. This article follows that provision. In other words, it is a referendum to the people, if this is adopted, whether they wish to elect or appoint, these three officers that are now stricken from the elective list and placed on the appointive list.

Mr. Olcott — Mr. Chairman, as I am very friendly to Mr. Wiggins, I feel a little superstitious in the matter and want to know whether he had not better number that section 22½?

The Chairman — The question is on the amendment offered by Mr. Wiggins. All in favor will say Aye. Contrary, No. It appears to be and is lost.

Mr. Tanner — I move the adoption of the article as amended.

The Chairman — The question is on the adoption of the article in its entirety. All in favor will say Aye. Contrary, No. It is carried.

Mr. Wickersham — I move that the Committee do now rise and report its action to the Convention.

The Chairman — The question is on the motion of Mr. Wickersham that the Committee do now rise and report its action to the Convention. All in favor will say Aye. Contrary, No. It is carried. (The President resumes the Chair.)

The President — The Convention will come to order. Will the gentlemen be good enough to sit down or lie down?

Mr. M. Saxe — The Committee of the Whole having had under consideration General Order No. 59 have considered the same and adopted various amendments thereto, and recommend its adoption by the Convention.

The President — The question is on agreeing to the report of the Committee of the Whole. All in favor will say Aye. Contrary No. The Ayes have it, the report is agreed to, and the amendment goes to the order of third reading.

Mr. Wickersham — I move that the Convention do now adjourn until eleven o'clock to-morrow morning.

Mr. Stimson — This morning.

Mr. Wickersham — I accept the amendment.

The President — The motion is that the Convention adjourn until eleven o'clock this morning. All in favor will say Aye. Contrary, No. The motion is agreed to and the Convention stands adjourned until eleven o'clock this morning. Whereupon at 2:05 A. M. the Convention adjourned to meet at 11:00 A. M., Tuesday, August 31, 1915.

TUESDAY, AUGUST 31, 1915

The President — The Convention will please be in order. Prayer will be offered by the Rev. Chas. S. Hager.

The Rev. Mr. Hager — Oh, God, our Father, we thank Thee that this State has had the service of so many men of experience and judgment, interested in public welfare, who have been gathered here for this important work throughout the summer. We thank Thee for the progress that has been made. We thank Thee for the encouragement that goes out to the State in the reports of this Convention, and we ask Thee, Heavenly Father, that the work here done may be of such character as shall command the enthusiastic support of the whole State, bring to all the people a new interest in their government, and provide by the instrument herein proposed for the orderly, progressive development of the State, and for the greatest welfare of its citizens. May the same spirit that has guided this Assembly be in its deliberations this day. We ask it in the name of Jesus Christ, Amen.

The President — Are there any amendments to be proposed to the Journal as printed and distributed? No amendments being proposed the Journal stands approved as printed. Presentation of memorials and petitions.

Mr. Dahm — Mr. President, I offer the following petition on

behalf of the Spanish War Veterans and ask that it be referred to the Committee on Civil Service.

The President — Referred to the Committee on Civil Service. The Chair lays before the Convention a communication from the secretary of the Committee on Constitutional Amendments, Spanish War Veterans Civil Service Association, which will be referred to the Committee on Civil Service. Also a communication from a committee of engineers, which will be referred to the Committee on Governor and Other State Officers. Are there any further memorials or petitions? Communications from the Governor and other State officers. Notices, motions and resolutions. The Secretary will call the roll of districts.

Mr. Tanner — Mr. President, I rise to a question of personal privilege. Last evening the statement was made by my friend, Senator Wagner, that he thought that the majority was entirely unappreciative of the work of the minority in this Convention. I don't know what remark in the Record he based that on nor in the strenuous days that we have spent have I had time to look at the Record which has just come before me, but before I leave the Convention I should like to say that if such an opinion was derived by my friends on the other side, I think it should be corrected. I think they have worked hard and faithfully, and with very great ability towards perfecting the articles which we have from the first day here tried to perfect and I should be quite unwilling to leave the Convention without an expression of appreciation to that extent. I am compelled, Mr. President, to ask to be excused for at least the coming week. I greatly regret it. I would much prefer to stay here, but I do not believe that I can do so, and, therefore, I ask to be excused for the next week.

The Chairman — All in favor of granting the excuse to Mr. Tanner will say Aye. Contrary, No. The excuse is granted.

Mr. Olcott — Mr. Chairman, a telegraphed memorial from the Spanish War Veterans which I desire to put on record.

The President — The memorial will be received.

Mr. Lincoln — Mr. President, if this is the proper order of business, I wish to call up the motion made by me some days ago to discharge the Committee on Revision from further consideration of the amendment generally known as the registration measure, printed No. 804, now Print No. 814. I presume that is in order at this time, is it not?

Mr. Rodenbeck — Mr. President, I think the bill referred to by Mr. Lincoln was reported last night by the Committee on Revision with a slight amendment, and the Committee on Revision was about to report it this morning in engrossed form.

Mr. Lincoln — Well, Judge Rodenbeck, the motion made about

two weeks ago was to discharge the Committee on Revision for the purpose of making the amendment in the present print of the bill, and the bill was reprinted No. 814.

Mr. Rodenbeck — Yes, we held the bill for about two weeks and upon looking up the Record I found that the bill was not recalled from the Committee on Revision but that your motion to recall the bill was laid on the table and the bill was directed by the Convention to be reprinted for the information of the members of the Convention, but the bill was not recalled from the Committee on Revision and last night we reported it with a change, of the word " voters " to " electors."

Mr. Lincoln — Well, my motion now is to take the bill from the table and consider it at the present time.

Mr. Wickersham — Mr. President, I ask that order be preserved in the chamber. It is impossible to hear what is going on.

Mr. Rodenbeck — Mr. President, the bill is really in the Committee on Revision and Engrossment. It was reported last night with amendments, has been reprinted and is now in the hands of the Committee on Revision and Engrossment.

Mr. Lincoln — Mr. President, if that is correct, I move to take the bill from the table and then I presume I may discuss it after taking it from the table.

The President — The Chairman of the Committee states that the bill is still in the hands of the Committee on Revision.

Mr. Lincoln — I now move to discharge the Committee on Revision from further consideration of the bill and to amend it as in Printed No. 814.

The President — Will Mr. Lincoln send the indication of the amendment to the desk?

Mr. Lincoln — Mr. President, may I suggest that the Clerk read the amendment indicated in the bill.

The President — The Clerk is struggling with the bill now. The Clerk will read the bill as amended, Print No. 814. The Secretary will read the bill as Mr. Lincoln proposes to have it amended.

The Secretary —

Proposed constitutional amendment to amend section four of article two of the Constitution, in respect to the enactment of election and registration laws.

The People of the State of New York, in Convention assembled, do propose as follows:

Section 4. Laws shall be made for the regulation of elections and for ascertaining by proper proofs the electors who shall be entitled to the right of suffrage hereby established and for their annual registration, which shall be completed at least fifteen days

before each general election. Such registration shall not be required for town and village elections except by express provision of law. In cities and villages having five thousand inhabitants or more, according to the last preceding State enumeration of inhabitants, electors shall be registered upon personal application only. Laws shall be made providing for special registration therein on personal application before such boards or officers as the Legislature shall designate, on a day or days not more than five months prior to the day of election, of such electors as shall then declare under oath that they are engaged in a regular vocation or occupation which will occasion their absence from the county during each of the regular days of registration. Such laws shall require electors so specially registered to establish, on the first regular day of registration, their continued right to vote in the election district for which they were registered but shall not require further personal appearance. Electors not residing in such cities or villages shall not be required to apply in person for registration at the first meeting of the officers having charge of the registry of voters.

Mr. Lincoln — This amendment, as indicated in italics on page 2 of the proposed amendment just read by the clerk, is intended to take care of the demand which we all know still exists on the part of commercial travelers and other persons whose vocation takes them away from their place of residence upon the days now usually assigned for registration. As we all know, this subject came up two or three weeks ago on an entirely different line, that is, under amendments which were proposed for the registration of these voters by affidavit to be filed, as some bills provided, before, and, as others provided, after, the day of registration. It seemed to be the consensus of opinion in this House that registration by affidavit was not desirable and for that reason the other amendments which were pending were defeated. I have introduced this amendment in a further attempt to take care of this situation, but to take care of it in a different manner. That is, to provide for registration of these individuals and classes who are interested in this subject, personally, but upon days other than days now provided by law. In other words this amendment permits the Legislature to enact appropriate legislation for the purpose of enabling these voters to register upon days to be fixed, not more than five months prior to the days of registration. That would permit registration under this special provision as early as the month of June. I am told by representatives of commercial travelers' organizations that a large percentage of the men in those lines of work have their vacations or at least their times of least stress in the month of June, and that more of them would be accommo-

dated by permission to register in June than in any other month of the year. However, the amendment as proposed by me permits the Legislature to fix a day or days in any of the months during the five months preceding registration, that is, they might follow out the suggestion of the proposed statute which Mr. Hinman mentioned here the other day, which I believe provided for a single day of registration in July, another in August, and another in September. That would be perfectly feasible under this proposed amendment. It is necessary, however, to put some limitation upon the powers of the Legislature in this respect and those limitations are imposed in the words "such electors as shall then declare under oath that they are engaged in a regular vocation or occupation which will occasion their absence from the county during each of the regular days of registration."

Mr. Brackett — I want to ask if the word "probably" should not be inserted in the sentence "which will occasion their absence," so that it will read "vocation or occupation which will probably occasion their absence."

Mr. Lincoln — I personally have no objection to that but I think that it should be made as emphatic as possible —

Mr. Brackett — That is true, but no man can be certain that he will be at a given place or away from a given place on given days.

Mr. Lincoln — I appreciate that, Senator Brackett, but at the same time it seems to me that a man would be perfectly justified in making the affidavit called for here based upon his expectation at the time he registers, and that if we use the word "probable", it may open it up a little wider than we want. Personally I won't object to it if the delegates wish. A delegate suggests that the words "expect to be absent" or something of that sort be inserted. I have no objection to any of these suggestions, but this language had careful consideration by several gentlemen to whom I presented the amendment.

Mr. Vanderlyn — Mr. President, may we not have a little less confusion? I cannot hear anything. It is impossible to hear anything.

The President — I think Mr. Vanderlyn is justified. There is so much confusion that it is impossible to hear and this is an attempt to perfect a bill in which the delegates have taken great interest.

Mr. Lincoln — Mr. President, in connection with the suggestions of change of verbiage, as I say, I have no personal objection to them, but this particular amendment was carefully discussed with all, I think, of the gentlemen who had the subject under consideration at the time it was before the Convention, about

three weeks ago, with the exception of Mr. John G. Saxe. He was absent at the time this was prepared. I was unable to present it to him. All of the other gentlemen with whom I did talk agreed upon the language which is contained in this amendment, and I think it perhaps is wiser to stick to the language there contained. Now, this contains one other provision which is very important, and that is the last sentence: "Such laws shall require electors so specially registered to establish, on the first regular day of registration, their continued right to vote in the election district for which they were registered, but shall not require further personal appearance." That is, we require these men to come before some board in, say, June or July and there go through all the formalities of personal registration, which are required of the ordinary voter in October. But that is not sufficient. After they have done that they must still cause to be filed with the appropriate board of registration on the first day of regular registration in October, further proof that they are residents of the district, and in other ways are qualified to vote in that district. So that we have made the requisite of personal appearance, but at a different time than the ordinary voter. We have kept the requisite of answering all the questions and going through all the formalities which every other voter has to go through, and we have in addition the requirement that upon the first day of regular registration the voter shall then furnish proof of his continued right to vote in that district. Those are the details of the bill, and it seems to me that this Convention should listen to the desires of these gentlemen, several hundred thousand in number, I am told, who are unable to vote each year because of the narrow restrictions of our Constitution and our laws at present.

Mr. Wickersham — Mr. President, when this measure was in the Committee of the Whole, I supported it in the form in which it was then presented. I think the amendment before us to-day is a great improvement on the measure which we considered and passed in Committee of the Whole. I think even those who voted against the measure as originally presented were desirous, if they could, of reaching the evil and enabling a large body of our citizens, whose occupation takes them habitually away from home, and very often renders it impossible for them to register personally — I say I think we all felt a sympathy with them, and a desire to facilitate their compliance with the registration laws if possible. But there was a fear that, by the means provided in the original bill, we should open the door to a greater evil than that we sought to avert. Now, I think this proposed amendment meets that fear and removes it. It provides that laws may be

made which shall designate a day or days five months before an election on which electors may then go and declare on oath,— in person, and declare on oath that they are engaged in a regular vocation or occupation which will occasion their absence from the county during the regular days of registration. There is a statement of the individual as to what his occupation is, what he insists will be the case, his case on registration day. Abundant opportunity to investigate any person who makes such a statement and to determine the validity of his claim is given. Then, such laws shall require electors so specially registered to establish on the first regular day of registration their continued right to vote in the election district, for which they were registered, but shall not require further personal appearance. So that, if a man who is a commercial traveler or railroad employee, or a mariner, or engaged in any other occupation which carries him from home on registration day, having previously made his declaration, finds that the condition is what he anticipates, he may supplement his personal appearance by the written statement. Now, it seems to me, Mr. President, that this is a very happy solution of a difficult question, and that it should command the support of all the members of this Convention, because after all election laws and registration laws are not designed for the purpose of preventing voters otherwise qualified from voting, but to prevent fraudulent voting, and if we have secured, as it seems to me we have by this measure, a means of preventing a fraud on the Election Law, by an absentee registration, it appears to me to be our plain duty towards a large body of our fellow citizens to make known their qualifications to vote and to facilitate their coming personally to the polls on election days. I hope, Mr. President, that this amendment will prevail.

Mr. C. Nicoll — What is there to prevent the Legislature from passing such a law to-day?

Mr. Lincoln — It seems to be the impression, Mr. Nicoll, that the present requirement that a voter shall have resided in his election district for thirty days has heretofore prevented the Legislature from enacting laws permitting registration prior to that time.

Mr. J. G. Saxe — I would like to ask Mr. Lincoln if he will accept one very small amendment to his amendment? The Committee on Revision has reported No. 804, which is now on third reading, and in so doing, it reported a single amendment. The very last word of this proposed amendment, the word "voters" should be changed to "electors", and if Mr. Lincoln's motion should prevail, and this bill should go to the Committee on Revision it would probably be amended by putting in the word "electors".

Mr. Lincoln — What line is that?

Mr. J. G. Saxe — The last word of your proposed amendment. It should be "electors" instead of "voters".

Mr. Wickersham — Section 4 of article II of the Constitution provides —

The President — There are too many delegates talking at once. Mr. Saxe has the floor.

Mr. J. G. Saxe — I was asking Mr. Lincoln a question.

Mr. Lincoln — Mr. President, I would like to answer the question asked by Mr. Saxe. Of course, the word mentioned by Senator Saxe was a part of the original Constitution and is not a part of my amendment.

Mr. J. G. Saxe — The word "electors"—

Mr. Lincoln — I have no objection to the word, but I would say that that is no part of that portion of the bill which I prepared —

Mr. J. G. Saxe — I am pointing out to Mr. Lincoln that Mr. Rodenbeck from the Committee on Revision has so changed that word in the bill I referred to and which is now on third reading.

Mr. Lincoln — Mr. President, it is entirely satisfactory so far as I am concerned.

Mr. J. G. Saxe — Mr. President, I understand that Mr. Lincoln has amended his amendment so that the last word shall read "electors" instead of "voters".

Mr. Lincoln — Mr. President, for the purpose of clarifying this situation I amend my proposal to include the word "electors" on line 18, and strike out the word "voters," in the same line.

The President — Is the Convention ready for the question? The question is on the motion to discharge the Committee on Revision from further consideration of print No. 804, recommit to Committee of the Whole, with instructions to report forthwith, and to amend as indicated. All those in favor of the motion say Aye, contrary No. The resolution is agreed to.

The Clerk will proceed with the call of the districts.

Mr. Clinton — I desire to make a motion to discharge the Committee on Revision from the consideration of the proposed canal amendment, and that it be reprinted and recommitted to the Committee on Revision. The reason is that on consultation —

The President — There is so much confusion in the Chamber that it is impossible to hear. Great events are pending and in a little while the delegates will be inquiring what has happened. Mr. Clinton will be good enough to continue.

Mr. Clinton — The object of this motion is simply this: After consultation with the Chairman of the Committee on Revision it appeared that certain amendments were needed to clarify the

language and prevent misconstruction. It was thought that it would be beyond the power of the Committee on Revision to make such changes. That is the only object.

The President — The Secretary will read the proposed amendment.

The Secretary — By Mr. Clinton: Resolved, That the Committee on Revision be discharged from the consideration of proposed amendment, print No. 839, that the bill be amended as follows, reprinted and recommitted to the Committee on Revision: Lines 7 and 8, page 3, strike out the words "which shall cease to be a portion of the canal system of this State as above defined". Line 24, page 3, strike out the word "any" and insert in place the words "the Black River". Page 3, strike out lines 19, 20 and 21, and the words "of dams, reservoirs or other structures", and insert in place thereof "The leasing of surplus waters of any of the State canals or canal feeders, or of any waters impounded by the construction of dams, reservoirs, or other structures shall hereafter be pursuant to general laws only."

Mr. Clinton — If necessary, I will add to the motion that it be recommitted to the Committee of the Whole with instructions to report the amendments forthwith.

The President — Is the Convention ready for the question upon the resolution? All in favor of the resolution will say Aye, contrary No. The resolution is agreed to. The Secretary will proceed with the call of the roll of districts.

Mr. Whipple — Mr. President, while we are in this order of business I want to make a motion to see if we cannot prevent putting into our Proposed Constitution a principle that to me seems entirely wrong and even obnoxious. I refer to third reading number 9, reprint No. 825, the proposition in relation to conservation of natural resources. The delegates will all remember the arguments that were presented in the Committee of the Whole in relation to section 6. I now move that this proposition be referred to the Committee of the Whole, with instructions to amend it by striking out section 6 and reporting forthwith. I do this that we may not put into this Constitution a reward to certain people for violating the Constitution now in effect and handing over forever a million dollars' worth of our property to people who have taken it by force.

The President — The Chair will have to hold that, as this measure is actually on the third reading calendar for the day, Mr. Whipple's motion will be withheld until the call of the measure upon the calendar. It will then be in order.

Reports of standing committees.

Mr. Low — A report from the Committee on Cities.

The President — The Committee on Cities reports by a bill. The Secretary will read the bill.

The Secretary — Proposed Constitutional Amendment. To amend Article III of the Constitution, in relation to the delegation of power to municipalities for certain purposes, by adding a new section. Second reading. To amend article III of the Constitution, in relation to the delegation of power to municipalities for certain purposes, by adding a new section.

The President — Any special disposition of this measure desired? Referred to the Committee of the Whole.

Mr. Rodenbeck — The Committee on Revision and Engrossment reports, with amendments, a bill of Mr. R. B. Smith. This bill has been before the Committee for some weeks and it has been held pending action upon another bill in the Committee of the Whole, but the Committee on Revision and Engrossment has decided to amend the bill in some formal respects.

The President — The Secretary will read the report.

The Secretary — Mr. Rodenbeck for the Committee on Revision and Engrossment to which was referred proposed amendment No. 744, Introductory No. 385, introduced by Mr. R. B. Smith, to amend sections 6 and 7 of article IV of the Constitution in relation to succession to the office of Governor, reports the same with the following recommendations: Page one, line eight, strike out "be" at the end of the line and insert in italics the word *become.* Page two, line twenty-one, after "Lieutenant-Governor," insert in italics *such vacancy shall be filled for the remainder of the term at the next general election happening not less than three months after such vacancy occurs; and in any such case, until the vacancy be filled by election.* Page two, line twenty-three, strike out "commencement" and insert in italics *first day.* Page two, line twenty-four, strike out "first annual" and strike out all after "which" and insert in italics *the office of governor shall be filled.* Page two, strike out line twenty-five and part of line twenty-six down to and including the period. Page two, line twenty-two, strike out "be" at the end of the line and insert in italics the word *become.*

ADOLPH J. RODENBECK,
Chairman.

The President — Is the Convention ready for the question upon the amendments proposed by the Committee on Revision. All in favor of agreeing with the report of the Committee will say Aye, contrary, No. The report is agreed to, and the proposed amendment will be placed on the calendar for third reading.

Mr. Rhees — Mr. President, the Committee on Civil Service presents its report. A minority of the Committee also presents

its report. I move that both reports be printed as documents and referred to the Committee of the Whole.

Mr. Unger — Mr. President, on behalf of the minority I desire to present a report.

The President — Without objection the reports will be received and referred to the Committee of the Whole.

Mr. Olcott — Mr. President, does that apply to both the minority and majority reports?

The President — Yes; they both go to the Committee of the Whole. Are there any further reports of standing committees? Reports of select committees. Third reading of bills. The Secretary will call the calendar.

The Secretary — Third reading No. 4, printed number 819 by Mr. R. B. Smith to amend article 3 and section 4 of article IV of the Constitution in relation to voluntary sessions of the Legislature and the Assembly.

The President — The proposed amendment is now open to debate under the rules.

There being no debate, the Secretary will call the roll. The delegates in favor of the adoption of the proposed amendment will answer Aye as their names are called, and delegates opposed will answer No.

Those who voted in the affirmative were Messrs. Adams, Ahearn, Aiken, Allen, F. C., Angell, Austin, Bannister, Barrett, Baumes, Bayes, Beach, Bell, Bernstein, Berri, Betts, Blauvelt, Bockes, Brackett, Brenner, Bunce, Burkan, Buxbaum, Byrne, Clinton, Cobb, Coles, Cullinan, Dahm, Daly, Dennis, Deyo, Dick, Donnelly, Donovan, Doughty, Dow, Drummond, Dunlap, Dunmore, Dykman, Eisner, Endres, Eppig, Fancher, Fobes, Fogarty, Ford, Franchot, Frank, Gladding, Green, Greff, Haffen, Hale, Heaton, Hinman, Johnson, Jones, Kirby, Kirk, Landreth, Latson, Law, Leary, Leggett, Lincoln, Linde, Lindsay, Low, McKean, McKinney, Mandeville, Mann, Martin, F., Martin, L. M., Mathewson, Meigs, Mereness, Mulry, Newburger, Nicoll, C., Nicoll, D., Nixon, Nye, O'Brien, M. J., O'Connor, Olcott, Ostrander, Owen, Parker, Parmenter, Parsons, Pelletreau, Phillips, J. S., Phillips, S. K., Potter, Quigg, Reeves, Rhees, Richards, Rosch, Ryan, Ryder, Sanders, Sargent, Saxe, M., Schoonhut, Schurman, Sears, Sharpe, Sheehan, Slevin, Smith, A. E., Smith, E. N., Smith, R. B., Stanchfield, Standart, Steinbrink, Stimson, Stowell, Tierney, Tuck, Unger, Vanderlyn, Van Ness, Wadsworth, Wafer, Ward, Waterman, Webber, C. A., Weed, Westwood, Whipple, White, C. J., Wickersham, Wiggins, Williams, Winslow, Wood, Young, C. H., Young, F. L., President.

In the negative: Mr. Marshall.

The President — Of those voting on the question of the adoption of this amendment, 142 votes have been cast in the affirmative, and one in the negative. The proposed amendment having received the affirmative vote of the majority of all delegates elected to the Convention, it is adopted. The Secretary will continue the call.

The Secretary — No. 820, by the Committee on Education. To amend section 1 of article IX of the Constitution, in relation to the supervision and control by the State of the education of children.

The President — The proposed amendment is now open for debate under the rules.

Mr. Schurman — Mr. President, I move its adoption. This proposed Constitutional Amendment now before us was unanimously adopted by the Committee on Education. I explained in the Committee of the Whole dealing with the proposed Constitutional Amendment in the form in which it then was that the Committee on Education had given hearings to all interested and had carefully considered every aspect of the question. The amendment in its present form was adopted to meet the objections which were presented in the discussion on the order of third reading. It will be recalled that the suggestion was made that the language of the proposal might authorize interference with religious instruction in denominational schools. Nothing, however, could have been further from the desire and intention of the Committee on Education. They, consequently, reconsidered the language of the amendment in the light of the objections presented. And they now unanimously submit the proposal in the amended form in which it is before this Convention. It will be observed that the difference between the proposal in its present form and in its earlier form lies in the fact that in its present form the proposal speaks of education first, in the free common schools, and secondly, elsewhere than in such schools. This classification was borrowed from the Education Law, having been inserted therein for the purpose of declaring the place in which the instruction required by the State may be received. The Education Law, section 620, states that the instruction required under this article shall be: 1. At a public school * * *. 2. Elsewhere than a public school. The supervision and control which the State exercises over the public schools, designated in the constitution free common schools, is practically absolute. On the other hand, the supervision and control which the State exercises over instruction elsewhere than at a public school has for its object the enforcement of equivalency with the instruction prescribed in the free common schools.

It has been, and will remain, the duty of the Legislature to fix the minimum standard of instruction which shall be obligatory upon pupils in attendance either at a public school or elsewhere than a public school. The statute now requires that a child who does not attend upon instruction at a public school may attend elsewhere upon instruction, provided such instruction is equivalent to the instruction given children of like age at a public school of the city or district in which such child resides. Where instruction is given elsewhere than at a public school the child must be in attendance during the same period of time as is required in the case of attendance at a public school. Whatever schools children attend, the length of vacations and the number of holidays must be the same. It scarcely needs pointing out that the Legislature may, in the future, prescribe a different minimum standard from the present one. The Legislature may, in the future, vary the length of the vacation and the number of holidays, and the number of days of instruction, and the number of hours each day. If, in the exercise of this legislative power, the Legislature should increase the standard of instruction for children in the public schools of the State, then, in virtue of the power of supervision and control which the State now possesses, it would be the duty of the department of education to see that children educated elsewhere than in public schools were receiving an education substantially equivalent to the enhanced education then prevailing in the public schools. It will be observed that the supervision and control by the State in schools other than public schools is undertaken for the sake of guaranteeing the children an education of a certain prescribed standard. Extensive modifications may be made in the future, either in that standard itself or in the means used for realizing it, but whatever changes may in this regard be made, it will be the right and duty of the State, under the power of supervision and control which it now possesses, to insist that schools other than public schools shall satisfy such requirement. The supreme end in view with reference to such schools is equivalency of instruction. Supervision and control are means to that end. Mr. President, I move the adoption of the pending amendment.

Mr. Cobb — Mr. President, I do not rise to make a speech on this question further than to express my humble opinion that it is very unwise to interfere with the present provision of the Constitution relative to public schools. The situation is a delicate one. We have our free public schools, the parochial schools, private schools, the schools maintained by various denominations. Now, so far as I know every one is satisfied with the present situation.

Education has not suffered under the existing provision which is

that the Legislature shall provide for the maintenance and support of a system of free common schools, where all the children of the State may be educated. That education is a public function has been settled by the courts. Now, why introduce into this situation which is satisfactory to all sides the possibility of trouble? I think this Convention has received millions of these orange cards during this Convention, indicating the fear on somebody's part that the parochial schools were going to gain some advantage here, or that they had some ambitions in that direction. From the other side, there has been expressed a fear that the State power would be further broadened and enlarged to their disadvantage. I do not think you can change a word in the existing provisions without introducing uncertainty, anxiety, trouble, confusion. You take the first provision: "The State shall continue its supervision and control of the education of children in its free common schools", as contrasted with the present provision: "The Legislature shall provide for the maintenance and support of a system of free common schools." It is undoubtedly to further enlarge and broaden and fix the centralized power, so far as the free common schools are concerned. I know that in the rural districts they are not particularly anxious for anything of that kind. Take the second provision, "and shall exercise such supervision and control elsewhere than in such schools as it now possesses." What does that mean? Simply that they shall go along and exercise the powers they now enjoy. To understand it, you must examine the law of the State, the statutes and decisions. We constitutionalize and fix them at this particular moment, and say that the conditions that now exist shall continue. If it has any effect, it is not a beneficial effect. I do not see the necessity of it. Then we go on and say: "and no powers in derogation thereof shall be conferred upon the local authorities of any civil division of the State." I have heard no argument that the schools have suffered or need a change. I do not know just how the present law is to-day. I do not know how it will affect a great many somewhat delicate matters that occur to me. For instance, in my own city, by a decision of the Court of Appeals, the city is aiding the orphan asylums there, which are denominational, and which are educating the children. We think it is to our advantage to do so. I do not know how this would affect the state of that law in that respect. I certainly think it is unwise to stir up this situation, to change this language, to introduce a lot of words and expressions which will have to be interpreted and to arouse suspicion and arouse antagonism to the Constitution. I suppose that this bill will have to be recommitted unless it is voted down at this time. I don't know that I care to say anything further. I have not looked into the question. I have not prepared to make

a speech, but I am expressing a pretty strong instinct, I feel, and one that is borne to me from all the people that I come in contact with, that this is one provision of the Constitution that might well be left alone.

Mr. J. L. O'Brian — Mr. President, speaking my own personal view I am opposed to this bill and shall vote in opposition to it. The speech which Mr. Cobb has just made has admirably expressed, I think, the common sense of the situation. This Proposed Amendment either changes the existing situation, or it does not change the existing situation. If it does not change the existing situation in regard to education, and supervision of public and private schools, then there is no necessity whatever for this measure. If it does propose to change the existing order, then we would have a right to ask exactly how it would change the existing order, and what the effect of it would be, and in that particular I find among the lawyers with whom I have talked in this Convention considerable difference of opinion. For example, you provide here for a distinction between free common schools and the private schools of all sorts, something hitherto unknown in our Constitution, and as to those private schools as distinguished from the free common schools the proposers of this measure say that in the future the State shall exercise such supervision and control as it now possesses. Now, in my opinion in the first place there is no occasion for any such provision in the Constitution. In the second place I find a disagreement among the attorneys who have read this section in this Proposed Amendment. Part of them say that that wording absolutely ties the hands of the State for the future, so that it can never exercise any more control than it does now. Part of them, on the other hand, say that that is not the case; that it leaves the State with the power of extension, that it may extend its control. Now, taking the position that Mr. Cobb has taken, I think any such experiment as this with a subject upon which all the people are keenly alive is a dangerous experiment. The best reply to this Proposed Amendment is that under the existing clause of the Constitution the courts have passed upon our rights of supervision and control and so we all understand them as they exist to-day; everybody is satisfied with it and to adopt this amendment would be to inject, in my opinion, a very serious element of danger into the interpretation of the law into the Constitution, and I trust as far as I am concerned that this amendment will not pass.

Mr. McKinney — Mr. President, before the roll is called on this proposition, I desire to offer some remarks in support of the contention of the learned Chairman of the Committee on Education, with whom I served, to the effect that the purpose sought to be accomplished by this amendment is plainly apparent, and that

the amendment approaches that purpose with language simple and direct; also to the effect that there is nothing proposed or intended by this amendment which is not plainly apparent upon its face. It is not true, I think, as has been stated, that this amendment leaves the law exactly as it stands and that we are merely constitutionalizing the present interpretation by the courts of the functions of the Legislature. It is true, Mr. President, that the courts have decided that education is now a state function; but it is also true that that decision means that education is a State function only by virtue of statute. It is only because the Legislature of the State has assumed by statutory enactment to regulate education, and to take entire charge of it, that it is a State function. There is nothing in the law or the statute or in the Constitution at the present time which forbids the Legislature from abrogating its powers, from surrendering its absolute control to whatsoever body, municipal or otherwise, it pleases. So that the issue is clearly drawn by this provision, and if there be those who claim that education is not a State function, and that the State should have the privilege of surrendering its absolute and complete control to any civil division or other body, this amendment naturally contravenes their wishes. If on the other hand it is desirable, as the Committee thought it is, to place in the Constitution a provision that the control of the State shall be absolutely permanent and shall not be surrendered at any time to any civil division, or to any body sectarian or otherwise, then this provision should be adopted. The issue, therefore, I say, is clearly drawn and the purpose to be accomplished by this amendment is plainly apparent. We would merely continue the present legal situation as interpreted by the courts. The provision in the amendment that the supervision and control of education "elsewhere" is of the same character and was inserted by the Committee merely to allay apprehension which the Committee believes should not rightly exist, but in our opinion it does allay any such apprehension and it leaves the control of denominational, sectarian and other than public schools exactly as it stands now and exactly in the situation which is so satisfactory, apparently, to the people of the State.

Mr. Lindsay — Does not the provision declaring that the supervision and control of schools other than public schools, at the bottom of the page, confine the Legislature to exactly the present law, and tie its hands in case it desires to extend such supervision and control?

Mr. McKinney — Generally as to control, but not as to details.

The President — The gentleman's time has expired.

Mr. Quigg — Mr. President, when this amendment was being discussed before I voted for it, but the explanation that Dr.

Schurman gives now of the sentence here in respect to supervision of the State disturbs me. He says that it means that instruction in parochial and other schools must be equivalent to the instruction in the public schools. But, sir, that may mean that in the supervision of somebody, some agent of the State, it may be thought that the instruction in a Jewish or Catholic school, a private school, is too religious, and that it sacrifices secular instruction to religious instruction. If under the interpretation that Dr. Schurman has given that that ruling can be had, I am against the amendment for the reason that I believe that parents should have the right to give their children such instruction as they think before God they ought to. It is hard enough on them, for those of us who are not Jews and Catholics, to compel them to support the public schools, without having the use of them, since in conscience they cannot use them. Now, if we are to invade their schools and say that they are sacrificing secular to religious instruction I shall be against the bill. I call Dr. Schurman's attention to the fact that the courts do give in their interpretation of amendments, and especially amendments that undertake to constitutionalize what is already the law — do give attention to debates and do consider what men say who are proposing these measures. I hope there will be some distinct statement on this subject.

Mr. Marshall — I am sure that Mr. Quigg will admit there is no one who believes more firmly that there should be liberty of conscience of all citizens of the State than do I; and that, so far as the Jews are concerned, there is no one who has a greater regard for their rights and liberties than I have. I can therefore say to Mr. Quigg and to the gentlemen of this Convention with a clear conscience that I can see nothing but good in the provision which has been presented and which we are now about to vote upon. The question arose, when this matter came up on the last occasion before the Convention, as to whether or not there was anything in this provision which might in any way interfere with liberty of conscience. The suggestion was then made, as I understand, that this was to have no interpretation, except as to dealing with secular education. Other questions then arose and it was referred back to the Committee for further discussion. The Committee invited a number of gentlemen who had given much thought to this subject and who were very much concerned with the question as to whether or not this would interfere with liberty of conscience, to appear before them, and, as the result of very careful and painstaking discussion, the measure in its present form was adopted, with the unanimous approval of every member of the Committee, of which I am not a member, and of the gentlemen who were present and who had been brought

into consultation. All of them had given the subject thought from the legal standpoint and from the standpoint of what would be accomplished, so far as religious liberty is concerned. Now, the principle which it was deemed important and necessary to lay down was that the State continue its supervision and control of the education of children in the free common schools. That should continue to be a State function. It was deemed necessary and proper that the State should charge itself with that as a duty, and it is for the interest of the State, as everybody must admit, that the education of children shall be preserved and shall be maintained. Now, the question was as to whether or not the declaration of that general policy would affect the citizens of the State and the children of the State, and would in any way interfere with religious liberty. Now, we found that the State has been exercising jurisdiction over all schools, not only over common schools but also over private institutions, over parochial schools, over the education of children in their homes, and that it had laid down a principle which had been adopted with the consent of all these organizations, and it had worked well for the benefit of the State.

Now, those principles were simple. They are laid down in the Education Law, in sections 620, 621 and 623. Section 620 says: "The instruction required under this article shall be, first, at a public school in which at least the six common school branches, of reading, spelling, writing, arithmetic, English language and geography are taught in English. Second, elsewhere than a public school upon instruction in the same subject taught in English by competent teachers." Now, there is the supervision and control exercised "or elsewhere than in the common schools of the State", which the State now possesses, and that is what is intended to be preserved. Now, those who favor the literacy test, and the use of the English language, certainly cannot object that these subjects shall be taught in the English language. Those who were opposed to the literacy test and who believe in the education of the children cannot object that in all schools the English language shall be taught, that these subjects shall be taught in the English language. Now, Section 621 requires attendance upon instruction. That is the Compulsory Education Law. It requires that a child shall attend school in a free common school or elsewhere; that the child must have within certain years of his age this instruction. Then comes finally Section 623, that "if any such child shall so attend upon instruction elsewhere than at a public school, such instruction shall be at least substantially equivalent to the instruction given to children of like age at the public school of the city or district in

which such child resides; and such attendance shall be for at least as many hours each day thereof as are required of children of like age at public schools; and no greater total amount of holidays or vacations shall be deducted from such attendance during the period such attendance is required than is allowed in such public school to children of like age. Occasional absences from such attendance, not amounting to irregular attendance in the fair meaning of the term, shall be allowed upon such excuses only as would be allowed in like case by the general rules and practice of such public school."

The President — The gentleman's time has expired.

Mr. Leggett — I recall that when this matter was before the Convention on the 29th day of July, I made this remark: "I do not know that I need to be ashamed to confess that my hold on the exact meaning of the intent and effect of the language employed in this proposal is rather slippery." I recall that my distinguished friend, Judge Clearwater, followed me, and, referring to my remarks, said this: "Regarding his rather uncomplimentary characterization of this amendment as 'slippery', it would seem to me that it is the reverse of 'slippery'. I challenge the gentleman to phrase this idea expressed in this amendment in a more forceful, more illuminative, more expressive phraseology." I submit, gentlemen, that my characterization of this language is as "slippery" has found a number of adherents, that people have become somewhat uncertain as to what it really did mean, and as to what its real effect was. We find later on that delegates here interested in private and parochial schools were afraid of their language. They did not know to what it might lead, and under their impulse it was changed, and this change, I am frank to say, has brought fears from other quarters. Now, it is violating no secret to say that people outside of this Convention who are not interested in private and parochial schools are afraid of the language of this amendment as it now stands. I also said on that day, words which I believe are just as true to-day: "It seems to me that it is plain that it does one of two things, that it does not change the power of the Legislature or that it does. Now, if it does not, it is nugatory. It does no good. The Legislature's control now is satisfactory. If it does change it, then in what respect does it change it?" To that there can be but one general answer. It cannot give the Legislature any more power than it has. That power has been decided to be plenary, and the universal testimony is that the development of the power now existing in the Legislature has brought the State of New York to the very highest rank amongst the States of the Union. It can then have but one effect. It must

restrict the power of the Legislature, and to that I am distinctly opposed, and I believe that the passage of this amendment at its best can do no good, and at its worst it is leading us to evils which we only dimly apprehend, and which no man can measure. I think the people outside of this Convention, as well as the delegates in it, are justly afraid of the effect of this amendment; and the wise thing for us to do is to turn it down.

Mr. Clearwater — Mr. President, if ideas did not change and the world did not advance, there would be no necessity for this amendment. But, as I have had occasion to say before from the floor of this Convention, it is not only the duty of the Convention to remedy existing evils but to forefend against evils which may come. This amendment crystallizes in the Constitution precisely what the Court of Appeals has decided is the function of the State. That is a judicial decision, subject to change by legislative enactment, but it cannot be attacked if written in the organic law. Education of the children of this State is a State function to-day. To-morrow the Legislature may decide that it is not a function of the State. One of the objects of this amendment is to make it a State function forever, or so long as this Constitution exists. Now, sir, this amendment was framed after the most unusual and remarkable consultation held in this building during the life of this Convention. After the Convention had listened to the eloquent characterization of the report of the Committee on Education by the gentleman who preceded me, the Committee invited the attendance of gentlemen representing every variety of faith present on the floor of this Convention, every phase of thought interested in problems of education. After a thorough discussion, where all the divergent views were candidly expressed, where all the haunting fears which had been suggested were fully developed and considered, every one of those gentlemen, representing all shades of belief, all shades of thought upon the subject of education, agreed upon this amendment as it is framed and presented here. Now, sir, there are no phantoms here. All the suggested fears are chimerical. I will not say that they are summoned from the vasty deep to assist simply in defeating this amendment, but they are destitute of any solid foundation. The children of to-day, sir, are the potential State of to-morrow, and it behooves a great commonwealth to write into is organic law exactly the provision we have here. "The State shall continue its supervision and control of the education of children in its free common sshools." Does anybody want to lessen that? I think not. "And shall exercise such supervision and control elsewhere than in such schools as it now possesses." What is that control? Simply to prescribe a

minimum standard of education which shall conform to the most modern conception of the treatment of education.

Mr. Mandeville — As a member of this Committee, I approached this subject with all the fear that has been expressed upon this floor. And yet I know, and we all know, that it is a very delicate subject and it would be best to let it entirely alone unless there is some good purpose to be served by this amendment. The expressions of Mr. Cobb, of Mr. O'Brian of Buffalo and others, I am sure have occurred to every man here and will occur to him, and must be answered before he votes. The reason for this amendment is not to disturb anything; on the contrary, it is to leave everything as it is. It was brought up and is now brought up because of the anxiety of the department and the anxiety of others that the conflict which is growing and growing in volume between the municipalities and the State might be settled, the municipalities asserting the right to control education and the State asserting a like right. The courts have decided that the State has that right and if we could be sure that that condition would prevail during the life of this Constitution we would say nothing. But the decisions are based upon statutes which may be changed. Therefore, for the purpose of cementing and securing into the structure of the State the right to control its schools, the Committee proposed this plan. The plan says that the State shall continue, as against the municipalities, as against any civil division of the State — that the State shall have the right to control education. As to its own schools, paid for by itself, surely the State has the complete right and no one doubts it. As to other schools outside of that definition, the State retains the right, and always should retain the right, to see to it that the education in those schools is sufficient to qualify the children for citizenship. In order to give the State absolute right as against the municipalities, as against the city of New York, as against all other cities where local authorities seek to control educational functions, we offer this amendment. I recognize that it is delicate ground which we are treading upon; that the less that is said, the better it is. I see no fear and no danger in the amendment as proposed. The State shall continue the control of its own schools, and there shall be no derogation of that control, and in all other schools it shall retain at least the control which it now has. That is satisfactory. It accomplishes the good purpose of securing State control without interfering with the control of the municipalities.

Mr. J. L. O'Brian — The point that disturbed me, and I want to get your opinion on it, is this: The present Constitution says nothing about control or supervision of schools, of private schools.

That being the case, do you not think that you are putting in the new Constitution, as you propose, a clause that the State shall continue to exercise its present control; that you, in fact, impose a constitutional limitation for the future upon that extended control, because, whereas the present Constitution has no such limitation, you provide that, as to the future, the State shall exercise inferentially, the present control?

Mr. Mandeville — Mr. Chairman, I quite recognize the point and yet I cannot see the force of it. It is my opinion that as that control is now by statute only, it is better to cement that statute, that we shall have at least that minimum control at all times.

Mr. Stanchfield — It is perfectly apparent from the debate that has taken place around this circle that there is a wide divergence of opinion among lawyers — and there are many distinguished lawyers in this body — as to what is the effect of this Proposed Amendment. If Judge Clearwater be right — and, that he is right upon the contention, I am prepared to concede — that the court of last resort in this State has held under the existing provision of the Constitution that there is now vested in the State all required powers to look after the education of the children of the State, I move in concluding this debate, Mr. President, to recommit this amendment to the Committee of the Whole and end the debate with that motion. Mr. President, I move that at the present time we terminate debate upon this interminable subject and recommit the provision to the Committee of the Whole.

The President — All in favor of that motion will say Aye, contrary, No. The Chair is in doubt. All in favor of recommitting will rise, and remain standing until counted. The Secretary will count. The gentlemen will be seated. All opposed, will rise. The gentlemen will be seated. The Secretary will announce the result.

The Secretary — Ayes 80, Noes 50.

The President — The ayes have it and the motion to recommit is agreed to. The Secretary will call the next number.

The Secretary — Number 835, third reading No. 6, by the Committee on Legislative Organization. To amend Section 6 of Article III of the Constitution in relation to the compensation and expenses of members of the Legislature.

The President — The bill is now open to debate under the rules.

Mr. Deyo — I move to recommit to the Committee of the Whole with instructions to amend by striking out the words "five

hundred" in line 4 and to report immediately, and on that I ask for a division.

The President — The question is upon the motion to recommit with instructions to strike out — "twenty-five hundred," is it?

Mr. Deyo — The motion is to strike out the words "five hundred", leaving it two thousand.

The President — All in favor of the motion will rise and remain standing until counted. The gentlemen will be seated. All opposed to the motion will rise. The gentlemen will please be seated. The Secretary will announce the result.

The Secretary — Ayes, 56, Noes 82.

The President — The motion to recommit is not agreed to. Any further debate upon the bill.

The President — There being no further debate, the Secretary will call the roll.

Those who voted in the affirmative were: Adams, Ahearn, Aiken, Austin, Bannister, Barrett, Baumes, Bayes, Beach, Bell, Bernstein, Blauvelt, Bockes, Brenner, Bunce, Burkan, Buxbaum, Byrne, Clearwater, Clinton, Cobb, Coles, Dahm, Daley, Dennis, Dick, Donnelly, Donovan, Dooling, Doughty, Dow, Drummond, Dykman, Eisner, Endres, Eppig, Fobes, Fogarty, Franchot, Frank, Gladding, Green, Greff, Haffen, Hinman, Kirk, Landreth, Latson, Law, Leary, Leggett, Lennox, Lincoln, Linde, Lindsay, Low, McKinney, Martin, F., Mathewson, Mulry, Newburger, Nicoll, C., Nicoll, D., Nye, O'Brian, J. L., O'Brien, M. J., O'Connor, Olcott, Owen, Parker, Parsons, Phillips, J. S., Reeves, Richards, Rodenbeck, Rosch, Ryan, Sanders, Sargent, Saxe, J. G., Saxe, M., Schoonhut, Sears, Sharpe, Sheehan, Shipman, Slevin, Smith, A. E., Smith, R. B., Stanchfield, Standart, Stimson, Stowell, Tierney, Tuck, Unger, Vanderlyn, Van Ness, Wafer, Ward, Waterman, Webber, C. A., Weed, Westwood, Whipple, White, C. J., Wickersham, Wiggins, Williams, Winslow, Young, F. L.

Those who voted in the negative were: Allen, F. C., Angell, Barnes, Berri, Betts, Brackett, Cullinan, Deyo, Dunlap, Dunmore, Fancher, Ford, Hale, Heaton, Johnson, Jones, Kirby, McKean, Mandeville, Mann, Martin, L. M., Marshall, Meigs, Mereness, Nixon, Ostrander, Parmenter, Pelletreau, Phillips, S. K., Quigg, Rhees, Ryder, Schurman, Smith, E. N., Steinbrink, Wadsworth, Wood, Young, C. H., President.

When Mr. Green's name was called he said: I wish to say that I have consistently followed the two thousand dollar mark, but I believe the legislators are entitled to a higher salary than

they have been receiving, and that seems to be the sentiment down in my district, or I believe it to be at least, and, therefore, since the majority votes in favor of $2,500, I shall vote for it.

When Mr. Heaton's name was called he said: I desire to explain my vote. I am heartily in favor of the amendment in so far as it repays the expenses of the members to their homes once a week, for such a visit is in the interest of good government and the more intelligent performance of duty. Keeping constant touch with his people would inform the members of the State Legislature of the public view in his district and enable him to better represent it, but with that increase of expense to be repaid the members, the salary is largely increased, beyond that which is sufficient to command a good type of man for the place. I, therefore, am compelled to vote no.

Mr. Angell's name was called. He said: I desire to make a little explanation. I was called out of the Chamber just before the roll was called and came in just as it begun, and I was under a misapprehension as to the proposition we were voting on. I desire to change my vote, and vote no, for the reason stated by Judge Heaton.

The President — The Secretary reports the vote upon the adoption of this amendment: Affirmative 111, negative 39; so as the amendment has received the affirmative vote of the majority of all the members elected to this Convention it is adopted. Gentlemen, the Chairman of the Committee on Revision called the attention of the Chair to the existence of some surplus matter in the amendments which we have already adopted this morning, No. 819, relating to the Legislature's convening on its own motion, the first amendment adopted this morning. That amendment contains a new section, and then proceeds: "Section 4 of Article IV of the Constitution is hereby amended to read as follows:" The Convention the other day struck out from that amended Section 4 all the amendments, so that it is left in exactly the words of the present Section 4 of the Constitution, and the words "Section 4 of Article IV of the Constitution is hereby amended to read as follows:" are entirely surplusage; they are followed by no amendment whatever. The Committee on Revision feel obliged to reject these words in making up their revision of the Constitution, and the Chairman asks that unanimous consent be asked that those words be stricken out. Is there any objection? The Chair hears none, and the surplus words are stricken out from the article as adopted.

The Secretary will make announcements.

Mr. Byrne — Mr. President, I ask to be excused from attendance until to-morrow evening's session.

The President — Mr. Byrne asks to be excused until to-morrow evening's session. Is there objection? The Chair hears none and the excuse is granted. The time has arrived and under the order of the Convention the Convention will stand in recess and upon reconvening the order of business will still be the calendar of third reading. The Convention is in recess until half past two this afternoon.

Whereupon at 1 P. M. the Convention took a recess until 2:30 P. M. of the same day.

AFTER RECESS — 2:30 P. M.

The President — The Convention will come to order.

Mr. Rodenbeck — The Committee on Revision and Engrossment presents some amendments to the bill relating to State officers, and a rearrangement of the form of the bill, without any change of substance. The Committee suggests that the bill be reprinted for the information of the members.

The Secretary — Mr. Rodenbeck from the Committee on Revision and Engrossment to which was referred Proposed Constitutional Amendment introduced by the Committee on Governor and Other State Officers, No. 831, introductory No. 716, reports the same with the following recommendations: In Section 1, number and enumerate the departments consecutively, omitting repetition of the words "A department of". Renumber Section 2, relating to the distribution of powers among the departments, to be Section 3, so that it will follow the descriptive matter relating to the departments in present Sections 3 to 19, inclusive. Renumber present Section 3, to be Section 2, and include in the section as unnumbered paragraphs the matter now contained in Sections 4 to 19, inclusive. Renumber Sections 20, 21 and 22, to be Sections 4, 5 and 6, respectively. In the paragraph relating to the Public Service Commissions, the words "There shall be" have been stricken out and the words "The department of public utilities shall consist of" have been substituted in their place, to make the description of the departments uniform. Page 6, line 4, the word "for" has been omitted.

The President — Without objection, this report will be printed for the information of this Convention and will lie on the President's table.

Mr. J. L. O'Brian — Mr. President, I suggest the absence of a quorum and ask that the roll be called.

The President — The Secretary will call the roll.

Upon the call of the roll the following delegates responded: Adams, Ahearn, Aiken, Allen, F. C., Angell, Austin, Bannister, Barnes, Barrett, Baumes, Bayes, Beach, Bell, Bernstein, Berri, Betts, Blauvelt, Bockes, Brackett, Brenner, Bunce, Burkan, Buxbaum, Clearwater, Clinton, Cobb, Coles, Curran, Doughty, Dahm, Daly, Dennis, Deyo, Dick, Donnelly, Donovan, Dooling, Dow, Drummond, Dunlap, Dunmore, Dykman, Endres, Eppig, Fancher, Fobes, Fogarty, Ford, Franchot, Frank, Gladding, Haffen, Hale, Heaton, Hinman, Johnson, Jones, Lincoln, Kirby, Kirk, Landreth, Latson, Law, Leary, Leggett, Lennox, Linde, Lindsay, Low, McKean, McKinney, Mandeville, Mann, Martin, F., Martin, L. M., Marshall, Mathewson, Mealy, Meigs, Mereness, Newburger, Nicoll, C., Nicoll, D., Nixon, Nye, O'Brian, J. L, O'Brien, M. J., O'Connor, Olcott, Ostrander, Owen, Parker, Parmenter, Parsons, Pelletreau, Phillips, J. S., Phillips, S. K., Potter, Quigg, Reeves, Rhees, Richards, Rodenbeck, Rosch, Ryan, Sanders, Sargent, Saxe, J. G., Saxe, M., Schoonhut, Schurman, Sears, Sharpe, Sheehan, Shipman, Smith, A. E., Smith, E. N., Smith, R. B., Stanchfield, Standart, Steinbrink, Stimson, Stowell, Tierney, Tuck, Unger, Van Ness, Wadsworth, Wafer, Ward, Waterman, Webber, C. A., Weed, Westwood, Whipple, White, C. J., Wickersham, Wiggins, Winslow, Wood, Young, C. H., Young, F. L., President.

The President — One hundred and twenty-five delegates having answered to their names, a quorum of the Convention is present. We will proceed with the calendar of third reading. The Clerk will read.

The Secretary — No. 825, by Mr. Dow. To insert in the Constitution a new article in relation to the conservation of natural resources.

Mr. A. E. Smith — It was a matter of regret to me that I was unable to be present on the day this proposed conservation article was reported from the Committee of the Whole to the Convention for passage. I believe that this is a mistake. I believe that it is a very serious mistake for this Convention to make. It seems to me we are setting the clock of progress, in the matter of the development of our natural resources, back at least ten years by our action. I hold the Constitution should contain nothing except the bare statement, including in the report of the State Officers Committee, that there should be a conservation commission appointed by the Governor by and with the advice and consent of the Senate, and the make-up, membership and the details of how that commission is to be composed should unquestionably be left to the Legislature in order that it may deal with the new problems that arise from time to time. There is

a long history connected with this question of water power development in this State. It goes back to the year after the last Constitutional Convention. Beginning in 1895, it was the policy of the State, or, rather the State lacked a policy with regard to the treatment and the development of its water power resources. As a result of that lack of policy, from time to time the grants of water power in the Niagara river were such that in 1905 or 1906 it was necessary for the Federal government to step in and put its hands on Niagara Falls in order to prevent it from being despoiled by the water power interests of this State. At the time the so-called Burton Act was pending in Congress, it was Horace MacFarland, I believe, the President of the National Civic Federation, that made the remark that New York State's record with regard to her water powers in the past was very bad; that the State itself had jobbed out all the sacred glories of Niagara for no return or recompense whatever to the people. An instance of how some of the grants on the Niagara river were made can be imagined from one single grant that in the terms of the contract read that the quantity of water to be taken was that which would pass through an opening or a ditch two hundred feet wide by about fourteen feet deep. The agitations for the preservation of Niagara and the other water powers of the State were so great that Congress authorized a treaty between this country and Great Britain, limiting the amount of water that could be diverted from the Niagara river for water power purposes. Immediately after the passage of the Burton Act, and the ratification of the treaty, the water power interests of the State turned their attention from Niagara Falls to the St. Lawrence river, and in 1907 there passed in the Legislature, and it became a law, what was known as the incorporation of the Long Saulte Development Company. Under the terms and provisions of the charter they were permitted to dam the St. Lawrence river at the Long Saulte rapids. The conservation engineers conservatively estimated that at that point in the St. Lawrence river there was capable of development a million horse power, which, under the terms of our treaty with Great Britain, five hundred thousand of that horse power belonged to the State of New York, because the boundary line between this State and the Dominion of Canada was approximately in the center of the river. The bill went down to Governor Hughes and he hesitated to sign it. He sent it back to both Houses for amendment, requiring that a certain percentage of the horse power therein developed was to be paid to the State of New York. He was entirely without knowledge of the subject, as were a great many members of the Legislature. Nobody really dreamed at the time

that there was granted to this power development company 500,000 horse power, the return to the State on which was something in the neighborhood of $25,000 a year. Anybody who knows anything about hydraulic development can understand very readily the value of 500,000 horse power.

Mr. Clinton — I would like to ask where you got the figures for a million horse power at the foot of the Long Saulte river?

Mr. A. E. Smith — From the Conservation Commission.

Mr. Clinton — The Conservation Commission is utterly mistaken. I was on the International Waterways Commission when we examined the whole thing. It is about 40,000 horse power.

Mr. A. E. Smith — Well, with all respect to my good friend, Mr. Clinton, I have heard this thing discussed, and I have actually seen the reports on it, and I would sooner have their word for it. Now, immediately after the signing of that act, Governor Hughes realized what he had practically given away to the water power interests, and he insisted upon the passage of a bill immediately after that which very clearly defined what was to be the future policy of the State.

The President — The Chair is obliged to enforce the five-minute rule, unless there is unanimous consent.

Mr. M. J. O'Brien — Mr. President, I ask that unanimous consent be granted to allow Mr. Smith to continue.

The President — Unanimous consent is asked that Mr. Smith shall be permitted to continue. The Chair hears no objection. It will be taken out of the hour.

Mr. A. E. Smith — Chapter 569 of the Laws of 1907 was the first declaration of public policy on the part of the State in dealing with the hydraulic development of water power. Here is the title of the act: "An act authorizing and directing the State Water Supply Commission to devise plans for the progressive development of the water powers of the State for the public use under State ownership and control." There is the meat in the cocoanut under State ownership and control. Thereupon the water-power interests in the State had quite a setback. They laid down quietly, and in 1913 the Long Saulte grant was repealed and the Court of Appeals sustained that repeal. Now, this year the Conservation Commission was reorganized. The Governor in his annual message recommended a single head, and he recommended three experts and three divisions under that single head: first, the division of land and forests; second, the division of inland waters, covering water supply storage, drainage and navigation; and, third, a division of fish and game. And he insisted in his message that the heads of these different divisions in the Conservation Commission be trained experts along the line

of their duties. In the first draft of that bill, this was found in the bill: "No plan for the storage of water or the development of hydraulic power shall be made by the Commission or any of its powers exercised in respect thereof unless such a plan be approved by a majority of the members of a board consisting of the conservation commissioner, attorney-general and the state engineer and surveyor." Right under that there was proposed to strike out of the conservation law the eligibility of men to be appointed by the Conservation Commission. Let us read what that was. It was copied from the public utilities act: "No person shall be eligible to or shall continue to hold the office of commissioner, deputy commissioner, chief of the commission or secretary of the commission who is engaged in the business of lumbering in any forest preserve land or who is engaged in any business in the prosecution of which hydraulic power is used or in which water is distributed or sold under any public franchise," etc. That was in the first print of the bill. That language in the bill brought forth a storm of protest from all the people interested in State development and State ownership of water power, and it was stricken out of the bill before it went to the Governor, and the eligibility clauses were restored with regard to the chiefs of the division and the Commissioner himself. Now, that brings us down to to-day. Now, here we are setting back the hands on the clock, tearing up the accepted State policy with regard to water power, tearing up the eligibility clause that has been such a strong and vigorous platform, and right in the fundamental law, we are taking away the safeguards that have been thrown around the water power of the State since 1907, when Governor Hughes recommended the passage of that first State development act. In fixing the duties here we say: "Subject to the limitations in this constitution contained, the department shall be charged with the development and protection of the natural resources of the State". That is all. No mention of the well-settled and the well-defined policy of the State to develop these water powers for public use, for the benefit of the people. It is true that on lines 20 and 21 it reads: "The Department shall exercise such additional powers as may be from time to time conferred by law." The power to formulate a plan for a State-wide development of water power will be again fought through both Houses before the people will feel safe and secure from the water power interests.

There is not one word of the qualifications mentioned here. The only qualification contained in the article is that they shall all reside in different judicial districts. It also says that they shall appoint and may at pleasure remove a superintendent. No

mention of his qualifications. It is directly opposed to the State policy. It is, in effect, tearing out of the statute law of the State the whole Conservation Article which seeks to give protection to the people against the men trying to obtain control of the water power in this State without any return to the people who are really the owners of it. Don't let any man that really believes in the conservation of our natural resources have the idea for a minute that he is helping the State with this amendment in the Constitution. Not by any means! He is taking away the centralized responsibility. He is placing the whole question in a board of men spread out all over the State. Some one said to me "That works well in the Education Department." Of course it works well in the Education Department. The Education Department moves along without resistance. There is no organized force in this State opposed to the education of children; of course not; it is an entirely different proposition. But there is some power in this State, some place — I am unable to say where — that is interested in grabbing the water power of this State, and evidences of their activity continually crop up here and in the Senate. This whole thing is a mistake. This question should be left to the Legislature. The Constitution should not tie the hands of the government for 20 years in dealing with this great water power question. The terms of these commissioners expire one each year. There will be no fixed responsibility upon one man. The qualifications are removed, and I predict that no plan of any kind for the development of hydraulic power in the interests of the people of the State will ever come from a commission of mine. I think that if this House adopts this, it is a mistake and a serious mistake. If the men who wrote to the Governor meant what they said, that they were not in favor of the other plan — only six months ago — the Board of Trade and Transportation, the Association for the Protection of the Adirondacks, the State Forestry Association, Empire State Forest Products Association, and the Camp Fire Club of America — if those men meant what they said six months ago when they addressed the Governor, they ought to be against this Conservation Article because it is in direct opposition to the present conservation plan as comprehended in the conservation law.

Mr. M. J. O'Brien — Perhaps this is the first time I have had to differ from the gentleman who has so forcibly presented the objections to this, but when all is said and done, you will find that he is concerned with the question of waterways, which is but one branch of this great subject, connected with the natural resources of the State. As I understand his argument, it is not that there is any limitation of this proposal upon the carrying

out of the State policy which has been fixed in the statutes of this State, but his objection goes to not having statutory regulations embodied in the Constitution, together with the principles which are here set forth. There are three branches of this subject. The forests are a rather important part, and so are the birds and the game. We are met here now, after having heard for months from everybody who is interested in the subject of conservation. We have attempted to present here a plan which would secure the very objects which my friend says ought to be obtained. For twenty years after the last Constitution was adopted, as I took occasion to say when this proposal was originally presented, the Legislature failed in the duty which it owed to the people of this State in fixing a policy which should be lived up to. The purpose of this Committee in dealing with this question was to carry on a consistent policy, which could only be done by having a commission which should not be constantly changed. We have had a change in the last year from a commission of three to a commission of one. We have had commissions of one, of three and of five; and the purpose of the Committee, on full consideration, having in view the immense work which is under the jurisdiction of a commission of this character, decided on this form of commission. All that can be said against it is that Mr. Smith has now, at the last moment, differed with the Committee as to the form in which they should carry on their work. I submit that the Committee, having had the advantage not only of the views of Mr. Smith, because certain gentlemen presented that side — perhaps with not as much ability or force, but their very best opinion, as best they could — and those were given consideration by the Committee. The proposal submitted here, which I have neither the time nor the inclination to go over again, presents a fixed and definite policy and imposes no limitation upon the Legislature, and is intended to carry out a consistent policy which was never presented, until the last few years, by legislative action. It ought to be placed in a position where the natural resources of this State under a consistent policy could be developed and preserved for the benefit of the State. I hope that this eleventh hour and belated suggestion, with respect merely to the waterways, will not be accepted, thereby throwing down what has been the labor of months to build up — a commission and a manner of protecting the interests of this State — which will result, if carried out, as I have no doubt it will, honestly and intelligently to the advantage of all the people of this State, not only in a single way, but in the forest and game laws of the State. I have not time within my limits to answer the other objections that have come from the fish and game men;

but let me say with respect to them, because we have all been inundated with communications from some of the fish and game clubs, that their objection is that they want to keep alive the same argument that has been made here for the code which we have prepared with so much care during the last fifteen years. There is no desire to interfere with that. The code on these subjects has been obtained after a hard struggle. The commission must necessarily be in sympathy with it. It is within the power of the Legislature, if the commission attempts in any way to interfere with the provisions of that codification, to enact laws which will annul the action of the Conservation Commission.

Mr. A. E. Smith — Would there be any objection to inserting in it the eligibility clause which is in the present law?

Mr. M. J. O'Brien — None whatever. I have no objection to anything that will strengthen it. I have not the slightest objection if it can be done without endangering the bill.

Mr. A. E. Smith — Then, Mr. President, I move to recommit the bill to the Committee of the Whole with instructions to report it forthwith amended as follows: After the word "district" on line 4 of page 2, insert the following: "No person shall be eligible to or shall continue to hold the office of commissioner who is engaged in the business of lumbering in any forest preserve county, or who is engaged in any business in the transaction of which hydraulic power is used, or in which water power is distributed or sold under any public franchise or who is an officer or holder of the stock or bonds of any corporation engaged in such business within the State."

Mr. M. J. O'Brien — Mr. President, I am not chairman of the committee. I am only speaking for myself as a member of that committee. I should be very glad, if it will not delay the bill, to have that incorporated in the bill.

Mr. Dow — Mr. President, I have no objection.

Mr. A. E. Smith — Mr. Chairman, one minute. Will there be any objection — I would like to ask the Chairman if there would be any objection to this amendment. On page 2 of the bill, beginning at line 7, where you seek to set forth the duties of the commission, would there be any objection to incorporating in that that part of the language of chapter 569 of the Laws of 1907 which would say that part of the duty of the commission of nine is to devise plans for the progressive development of the water powers of the State for the public use under State ownership and control.

Mr. Marshall — No, we cannot accept that amendment. That is making an act of the Legislature a constitutional provision and it certainly should not be done.

Mr. A. E. Smith — Ah, I know, but you are doing too much legislating, Mr. President, with this already. There should be no powers and duties defined in this Constitution for any commission, especialy a question like the conservation question, in this State. Now, you started to legislate and that is what I want to do. You are legislating duties in here, and you are legislating them in a way which I think is not sufficiently clearly defined for me, for the "development and protection of the natural resources of the State". That means nothing. I offer the second amendment, Mr. Chairman.

The Chairman — The gentleman will send his amendment to the desk. While Mr. Smith is preparing his amendment is there any debate on the bill?

Mr. Whipple — A question of information. Just where are we at now, Mr. President?

The President — The Conservation amendment is being debated, under the rule, and there is now half an hour remaining for debate.

Mr. Whipple — Will it be in order, Mr. President, at this time, to make a motion in relation to any portion of the bill?

The President — Yes, but if a Proposed Amendment, the amendment which is being reduced to writing by Mr. Smith will have precedence.

Mr. Whipple — Certainly, but while he is writing, I can make a motion?

The President — Yes.

Mr. Whipple — Mr. President, prematurely this morning I made a motion to recommit and strike out Section 6 of this bill. I thought that I was in order because we were in the order of motions and resolutions, and this I thought then was a subject under that order. It was decided it was not, and, therefore, I want to renew that motion now, and I want to renew the motion because in that respect, at least, I agree with Mr. Smith, that the Committee has legislated too much altogether, because it has put in this Section 6 whereby it proposes, by this Constitution, to reward a whole lot of people who have violated the Constitution now in force by taking our property without leave or license, and if this Section 6 remains as in this bill, and I hope you will make no mistake about that, in practice in effect, as a final result under the Commission's action, based upon all experience, you are handing over to these people at least one million dollars' worth of your property, free gratis, that they will hold and occupy as against all other people, the choicest places in the choicest scenic section of our country. Lake George and the beautiful places surrounding the lake, and you will put into this Constitution the

principles of rewarding offenses against the present Constitution and there is no getting away from it. It is a thing that should not be done by thoughtful men who have a conscience. It is a thing which, if it remains in this bill, will prevent me from voting for any of the bill. There is no principle in justice, in common sense, in right, in equity, that can for a moment be urged in support of the proposition of that sixth section; and if you understand, and if you are not led astray by the specious plea that it is to take care of some old man or some old woman, you won't consider it for a moment. The story about that has not been half told. There are about 700 people, not one per cent. of whom should have applied to them the specious argument set forth here, and to urge that for the special benefit of the other 99 per cent., would be, to say the least, an outrage. You have refused the right of any other citizen of the ten million in this State to have any interest in this land, which is theirs, and yet by this section, you give to these people who have taken it by force the grounds they occupy to the extent of ten acres. How can you justify that? I do not care what reason any person advances why should it be done. There is no reason that justifies a wrong. There is no reason that will justify an honest man in putting in a Constitution an approval of a wrong and hand over a million dollars' worth of the State's property to people who have been before handed enough to take it by force. There may be an isolated case; there are a few where that is not true. I know of an island in Lake George where a man went there by authority issued twenty-five years ago, but ever since 1895 he has been occupying illegally the land. This would justify the occupation of property that you could get fifty thousand dollars for in a minute and he is having it free and holding it as against all the people, who visit Lake George. That is only one out of hundreds of cases. I move to recommit this bill to the Committee of the Whole with instructions to strike out Section 6 and to report forthwith for the reasons I have stated.

Mr. Westwood — I desire to be heard for a moment on Mr. Whipple's motion, if it is now in order.

The President — It is.

Mr. Westwood — The proposition of Mr. Whipple is directed to section 6 which permits the issuance to certain classes of individuals of leases within the Adirondack forest preserve. I wonder if the members of this Convention distinctly understand what it is by the insertion of this section proposed to do? Let me read a word or two from section 2, at the bottom of the second page, which is the language of the present Constitution and which it is proposed to continue in the revised Constitution: " Lands of the State con-

stituting the forest preserve shall not be leased, sold or exchanged "— and yet, in section 6 it is provided that the department "on payment of just compensation may issue to certain classes of individuals non-transferable licenses." This, Mr. President, is the most flagrant illustration of the granting of special privilege which has come before this Convention at any point of its deliberations. We have heard the general proposition of special privilege argued during the memorable debate upon Mr. Barnes' measure. We have heard special privileges in particular instances argued in respect to judges' pensions and matters of like import, but we have had to wait until now to be confronted with the most flagrant imaginable case of special privilege which it is proposed by members of this Convention to read into the fundamental law of this State. But why is it so palpably a case of special privilege? Judge Clearwater may not have a lease; I may not, none of the members of this Convention may have a lease to any part of the forest preserve, the great public park. Nobody outside of the few counties which go to give the land for the forest preserve may have this special privilege. It is confined to those few persons who can meet certain particular requirements, first: They must have been occupants of and continuous residents throughout the year of the lands; they must have actually occupied the land since a given date six years ago, and they must have improved the property which they seek to lease by the erection of permanent buildings thereon. It would almost seem that this was especially drawn to cover the case of some particular individual — I use the noun in the singular — rather than any special class that were entitled to something by the Constitution makers of this State. In order to justify it, in order to justify any such scheme which reflects a palpable case of special privilege, there must be strong reason to justify the singling out of so small a class for the giving to them of the privilege. Now, I am told that this is for the purpose of reaching cases of people who have lived there a great many years, but I have in my hand a list of so-called squatters, a list of occupants which I have been over with a great deal of care, supplied by the Conservation Commission, and I there find an almost insignificantly small number of residents, people whose homes are there. The proposition is drawn wide enough to cover hotels that have been operating, and the list shows a large number of these money making concerns which would be entitled to leases from the State, because they are also used as homes by residents. Mr. President, we should not in the Constitution write a clause which will grant a special privilege to those who occupy in derogation of the State's right.

Mr. Austin — In spite of the fact that the delegate, Mr. Whipple, says no man with a conscience can support this section, I ask

you with all the earnestness that I have within me to support the report of the committee upon this section and to support the report of the Committee ot the Whole after the first discussion on the subject. This takes care of no rich camper on Lake George, gentlemen. It does not affect a single island there. In spite of the slur of Commissioner Whipple, when he says be not misled by the proposition that this takes care of any poor man — that is just whom it does take care of, and I say to you after months which I spent in the investigation of matters of this kind, after personally interviewing and taking the testimony of nearly seventy per cent. of all the occupants upon State lands in the Adirondacks, I say to you, that a large percentage of the people affected by this amendment are so poor that if you put them off they will have to be sent to the poorhouse; and the man who now moves to strike this from the Constitution, why didn't he put those people off when he was commissioner? Of course, he can ask me the same question, why didn't I, and I will respond exactly as he responded: that he did not dare because those people, most of them, gentlemen, went into the forests, or many of them, years and years and years ago when there was not any such thing as a title to Adirondack land that amounted to anything and they have just as firmly in their souls the conviction that they have the right to be there and to the lands there, as we have the conviction in our souls that we have the right to be here in this Convention. And I assure you — I do not defend the attitude, but I tell you just as sure as those people are removed from the Adirondack lands millions of dollars' worth of land will be burnt over by fires which will be wilfully set by those people.

Mr. Brackett — Mr. President, does the gentleman think it is consistent with the dignity of the great State of New York that it should be afraid to do what is right in fear of lawlessness? Now, really and truly?

Mr. Austin — I say this, Mr. President, that the State of New York should not be afraid to do what is right, and what is right is not always exactly what is law or legal. I admit that the theory may be entirely against this proposition; but, gentlemen, all the argument of equity is on the side of leaving these people where they are, if the Conservation Commission decides in a particular case that their claim is meritorious. It has all been threshed out. You have heard it fought out in this Committee and it was fought out in the Conservation Committee. It originally stood sixteen to one against it, and when the members became familiar with the circumstances the vote stood about sixteen to one for it, and I beg the members of this Convention to stand by the report of the Committee. I beg the members of this Convention to stand by the report of the Committee.

Mr. J. G. Saxe — I want to concur absolutely in what Mr. Austin has said. Now, the Committee sat for three months on this bill and we had one strong advocate of camp sites, and that was Commissioner Whipple, and a number of rod calls were taken, and that project was finally beaten. Then, at the last moment, the Conservation Commission itself came before us with maps and explained this Racquette lake situation to us. I wish I had those maps here to show the members of the Convention the exact situation which we are trying to take care of in what I claim to be an absolutely constitutional method. Racquette lake is the scene of the greater part of the virgin forests of the State which particularly must be kept free from fire. Because of this community which has been there since 1848 those virgin forests have been free from fire. It is a large lake with four or five promontories running into it, and each of those promontories, or nearly every one of them, is not State land but private land, and on that private land are hotels and private residences, and through that lake run two steamboat lines, there are two churches and a schoolhouse, and the proposition here is that because in 1909 the State finally got title to the poor people's land up there, we should now throw all those poor people into the lake and turn Racquette lake over to the rich people who own their private property on private land in Racquette lake. I want to speak one moment on the constitutional rights of this matter. Under the Constitution, the laws of this State, the State has absolute right to sell its land or to lease its land, but by this one constitutional provision, we say no, because of the conditions in the forest preserve, the need of preserving the forest, we will not extend that general power of the State, but because of the peculiar conditions, we will place a restriction on that. Now, what is the restriction? When we come to that we find that there is this one situation which has existed since 1848, where people have built, and borne children upon this lake, and they are all living there as a community, where the restrictions ought not to extend, and so in putting a restriction in our Constitution, due to conditions in the forest preserve we do not extend that condition, that restriction, to this one class at Racquette Lake. Bear in mind the people live, seventy families, 500 of them, throughout the year — it is not a case at all where people live there just in summer and not in winter — They live there throughout the year and we are not giving them any rights whatever, we are not making the conservation provision do any one act whatever. We are merely saying to this new commission, "You may, in your discretion, if you deem it advisable, issue licenses." What kind of licenses? A revocable license? Yes, not transferable licenses. And whom

are you going to issue them to? Just such of those 70 families at Racquette and one or two other localities who have actually improved their property and did so before 1909 and who live there throughout the year. Now, that is absolutely all there is to this proposition, the proposition that we ought to give our commission discretion to take care of, and is a matter which, as Mr. Austin pointed out, the committee felt the great grievance there would be there if we could not do something to take care of that big situation if we should place broad restriction as to our forest preserves without limiting the restriction to this one locality. And that is absolutely all there is to this proposition.

Mr. Wickersham — Mr. President, the explanation of the gentleman who has just taken his seat does not fit with the measure that is before this Convention.

Mr. J. G. Saxe — I will yield to a question now, General, on your time, if I can help you at all.

Mr. Wickersham — No. I am speaking now from the measure before. The gentleman would have us consider this as authority to issue a revocable license to some few 70 people living on Racquette Lake in the locality which he has described. The provision before us has no such limitation. It reads that "the department may issue to any occupant of and continuous resident throughout each year upon State lands within the forest preserve"— anywhere within the forest preserve, Racquette Lake or any other lake, or any other field, or any other mountain, any place, so long as a man was there on the 1st of December, 1909, and has put up a permanent structure, a log house, he can have a license to occupy ten acres of the State land. And what is the excuse for giving this extraordinary provision in a Constitutional amendment? Why, sir, we are solemnly told by the delegate to this Convention that these poor people whom we are invoked to pity and for whom we are asked to make this extraordinary provision will burn up the forest preserve if we don't provide this license. Now, Mr. Chairman, Mr. President, I submit that no more extraordinary proposition has been advanced in this body than that. The idea that delegates to a Convention of the Great State of New York shall put in their fundamental law a reward to successful trespassers who have violated the existing Constitution, because if we don't give it to them, they will burn up the forest preserve! The mere statement of the proposition is enough to condemn it. While I am on my feet, Mr. President, I want to make one other observation and that is with respect to the road which is authorized in section 2. It does not seem to me, Mr. President, that this proviso is necessary, and it certainly does not seem to me to be

expedient. The section is broad enough as I read it to authorize whatever road is necessary to be made in the proper development of the forest preserve, but why we should put in this Constitution that nothing herein contained shall prevent the State from constructing a State highway from a barn to a white birch, and from a white birch to a yellow poplar, and from a yellow poplar to a fir tree, I fail to see. I think it is a perfectly ridiculous provision, and I shall move to strike it out.

Mr. J. G. Saxe — That was put in by the Committee of the Whole.

Mr. Wickersham — I know it was. Not by my vote. I voted against it, and I don't believe in it. I don't believe in putting it in that way. I shall vote against it here, and I am going to move to recommit the bill to the Committee of the Whole, to strike out the paragraph at the end of Section 2, and to strike out all of Section 6.

Mr. Bunce—Mr. President, I desire to support the amendment of the delegate from Cattaraugus to strike out Section 6. The news was given out only yesterday that the Appellate Division of the Third Department had rendered a decision ousting certain squatters from valuable virgin forest lands in Hamilton county wilderness. The defendants were Henry La Prairie and others. I believe we should not write into the Constitution a provision that will nullify the decision of the court.

Mr. Marshall — I don't understand why the Chairman of the Judiciary Committee should have manifested so much opposition to this bill. It is a very simple proposition. The Section 6 was added at the suggestion of the State Conservation Commissioner and his staff. They appeared before the Committee on Conservation after the Committee had completed its draft of the bill and was about to report. They brought to the attention of the Committee a state of facts which has been described by Mr. Austin. We had laid down the general rule that the lands of the State were to be kept forever as wild forest lands; not to be sold. We found a situation which was a serious one. All of the vituperations that may be addressed to this provision cannot wipe out the fact that you are dealing with a class of people who are not to be judged by the same standards by which men are judged in a Constitutional Convention. And there was a real terror which confronted us. Moreover, these people had certain rights, not, perhaps, strict legal rights, but certain equitable rights. Many of them had gone into possession of the lands with the consent of the then owners. The title to these lands was questionable. Until December, 1909, the State had no real title, no title which could be maintained in court, and these people had acquired rights, at least possession of these lands prior to that time. Now, there is

nothing that is given to them, there is no ownership given them, there is nothing granted to them. They are merely permitted, where they are occupants of — have been, prior to 1909, occupants of these lands, and are continuous residents thereon throughout each year, that they may have, in the discretion of this board, a revocable non-transferable license for the continuance of that occupancy. That is all. It is merely the dictate of prudence, together with a sense of justice, which has occasioned the adoption of this provision, and it does not give anybody lands which he can sell or dispose of, and it does not cover the case of any people who have not an actual equity behind them. Now, with regard to this road which has been described with so much sarcasm. This road was not proposed by the Committee, but on this floor. Senator Blauvelt and a number of other gentlemen, including President Schurman and Mr. Whipple. proposed this change in this provision. They thought it was necessary, and Mr. Schurman made a very strong argument in favor of it. It was opposed to giving roads in general. They know what that meant; they know what " improvement in roads " means, and all those phrases. They know it means an attempt to make a checkerboard of roads through the Adirondack forest. They opposed it. By concession of the Committee of the Whole, they voted this in after two days' discussion of this provision with these amendments, the action of the Committee was approved. Now, so far as the suggestions of Mr. Smith are concerned, Mr. Smith does not seem to recognize what the purpose of this first provision is. It is not to lay down a legislative enactment, which is to control every step that is to be taken by these commissioners. These commissioners are to organize what is really a laboratory to study the situation of the forests and waters, and to deal with the question of fish and game, and they are not to go into the business of developing water powers, or into the business of dealing with the power. The subject of limitation in the Constitution contained — the department was to be charged with the development and protection of the natural resources of the State; the encouragement of forestry and the suppression of forest fires throughout the State; the exclusive care, maintenance and administration of the forest preserves; the conservation, prevention of pollution, and regulation of the waters of the State; the protection and propagation of fish, and so forth. Now, that is all that was done. But these attempts are now made of adding to this provision new clauses which may have lodging with them the potency of much mischief, which may result in our saying here that the State shall embark upon an enterprise of power development, which none of us have ever considered in Committee, which has not been considered in this Convention even, and to inject it into this measure at the eleventh hour, when

we are about to vote at third reading, is absolutely unthinkable and is improper. We prevent the Legislature from amending a provision on third reading. A measure must be on the desks of the members for three days before putting in new matter. Now an attempt is made to put new matter into this provision. This measure is a measure which will make it proper for the resources of the State to be developed for their preservation, for their conservation, and anything more than that would be a wrong and a mischief.

Mr. A. E. Smith — Mr. Chairman, since I offered my second amendment, taking the title of Chapter 569, I have arrived at the conclusion, inasmuch as that statute stands on the statute books, I will be satisfied with this amendment. And to this, there should be no objection, and this can put no mischief into it, but will help to temper a little the mischief of the present measure. After the word "State" on line 12, so that it will read this way: "The conservation, prevention of pollution and regulation of the waters of the State and with the enforcement of the general laws of the State in respect thereof". Now, that leaves the question open at any time for the Legislature to change its policy as laid down by Chapter 569. But without that, without that there is where the mischief is. You so form the policy adopted by the State, and that Hughes bill of 1907, and you are narrowing them down to just the protection of the natural resources, not to devising of land for their development.

Mr. Marshall — The Committee is ignorant of what are the general laws of the State. They don't know what laws are referred to. They don't know what might be lodged in those phrases. We do provide that the department shall be charged with protection so far as the waters of the State are concerned, prevention of pollution and their regulation. That is sufficiently broad to cover everything legitimate and permissible. Beyond that I don't know what is intelligent. And also, "such additional powers". "The department shall exercise such additional powers as from time to time may be conferred by law," if thereafter the Legislature in its wisdom decides that it shall commit to this body the enforcement of law which may be hereafter adopted and which we may know the meaning of, which will be sufficient; but to say now at this time, at this vital moment, that we shall accept language such as is now proposed, is something that I cannot approve of. I would rather leave the entire measure alone.

Mr. Parsons — Isn't the advantage of this amendment that it makes it clear that it is for the Legislature to declare the policy of the State as to development of water powers?

Mr. Marshall — That appears in lines 20 and 21. "The department shall exercise such additional powers as from time

to time may be conferred by law", which will deal with the whole subject.

Mr. A. E. Smith — At the time I spoke of the bill, I spoke of the language on lines 20 and 21. What I am afraid of is that you will never be able to get another bill through here like Chapter 569. It required a forceful, vigorous man like Governor Hughes to put it through. I, for one, am never going to allow it to be destroyed. This simply amends — let us see what it would do. It would say this conservation commission is to be charged with the conservation, prevention of pollution and regulation of the waters of the State, and the enforcement of any general law with respect thereto, any general law with respect to the conservation of water. Isn't that the duty of the conservation commission?

Mr. Marshall — I don't know what "any general law" may be. It may be forty different things that I have never seen.

Mr. A. E. Smith — What difference does that make? If it is a law for the enforcement, for the conservation of water, for the prevention of pollution, and regulation of waters of the State, and it is a general law, who should enforce it? Only the conservation commission.

The Chairman — The time for debate is closed.

Mr. A. E. Smith — Permit me to say, Mr. President, that this is my second amendment in place of the other I sent up. I withdraw the other one, if I may have the permission, Mr. President.

Mr. Cobb — Mr. President, although the time has expired, may I offer this amendment?

Mr. Dooling — Mr. President, may I offer an amendment?

The President — The gentlemen will send their amendments to the desk.

Mr. Wickersham — Mr. President, I desire to make one statement, if I may, by unanimous consent. Since objection to the highway provision in Section 2, my attention has been called to two opinions by attorneys-general of the State, and without debating them, I am willing to withdraw my objection to that section because of them.

The President — The question, without further debate, arises, first, on the motion of Mr. A. E. Smith, to recommit to the Committee of the Whole, with instructions to report forthwith, amended in two respects. The first will be read by the Secretary.

The Secretary — On page 2, line 4, after the word "district" insert the following: "No person shall be eligible to or shall continue to hold the office of commissioner who is engaged in the business of lumbering in any forest preserve county, or who is engaged in any business in the prosecution of which hydraulic power is used, or in which water is distributed or sold under any

public franchise, or who is an officer or holder of stocks or bonds of any corporation engaged in such business within the State".

Mr. Clinton — There are several amendments of a like nature recommitting to the Committee of the Whole with instructions to report forthwith. As I understand the rule, if one of these motions carries, the bill has to be reprinted.

The President — That is correct.

Mr. Clinton — Mr. President, I rise to ask whether we can pass on all of these before it goes back to the Committee of the Whole, so that it can be reprinted.

The President — The Chair thinks that you can, if there is no desire for a division on the amendments in such a manner that that cannot be done.

Mr. A. E. Smith — Mr. President, let me suggest that the other amendments are in the nature of amendments to my first amendment. Am I right about that? What happens to the bill after the first motion to recommit carries?

The President — The bill goes back with instructions to amend as indicated.

Mr. A. E. Smith — Mr. President, I ask for a rising vote on that motion as to the eligibility clause.

The President — All in favor of recommitting the bill with instructions to amend as indicated with respect to the qualifications of commissioners will rise and remain standing until counted. The gentlemen will take their seats. The motion is manifestly carried.

The Secretary will read the second motion by Mr. Smith.

The Secretary — By Mr. Smith. On page 2, line 12, after the word "state" insert the following: "And with the enforcement of the general laws of the state in respect thereof".

The President — The motion is to recommit to the Committee of the Whole with instructions to amend and report forthwith as read by the Secretary.

Mr. A. E. Smith — Mr. President, I ask for a rising vote.

The President — All in favor of the motion will rise and remain standing until counted. The gentlemen will be seated. The amendment is manifestly carried. The motion now is upon the amendment by Mr. Whipple, to recommit, with instructions to strike out Section 6 of the bill.

Mr. Whipple — Rising vote.

The President — All in favor of that motion will rise and remain standing until counted. The gentlemen will be seated. All those opposed, will rise and remain standing until counted. The vote is reported as 68 to 60, and the bill is back in the Convention, having lost Section 6 on the way. The next question occurs on Mr. Cobb's amendment. The Secretary will read.

The Secretary — On page 3, strike out the last sentence of Section 2 and insert in place thereof, the following: "Nothing herein contained shall prevent the state from constructing highways within the forest preserve but no highway shall be constructed across lands of the state, excepting by unanimous consent of the conservation commission."

Mr. Marshall — Mr. President, if that is adopted, I shall move to strike out the enacting clause.

The President — All in favor of the amendment will say Aye, contrary No. The Noes have it, and the amendment is lost. The bill, having been returned with amendments, will be laid aside to be reprinted.

The Secretary will read the next number on the Calendar.

The Secretary — No. 834, by the Committee on Taxation: To amend the Constitution, by inserting a new article, in relation to taxation.

Mr. Olcott — I move that this bill be recommitted to the Committee of the Whole, with instructions to report it back amended in the particular which I have written out and ask the Secretary to read.

The Secretary — On page 2, line 23, strike out the period at the end of the line and add —

Mr. Quigg — Mr. President, we cannot hear.

The President — The conservation of silence is requested. It is impossible for the members to act intelligently if they cannot hear the Secretary and it is impossible for the Secretary to act intelligently if he cannot hear the members.

The Secretary — On page 2, line 23, strike out the period at the end of the line and add "apportioned in two or more counties, none of which is within a city, but nothing herein contained shall interfere with special franchise taxes by state authority".

Mr. Olcott — Mr. President, this is at the end of the Section 3, which is to be found on page 2 of the bill. In discussing the matter let me read the commencement of this section: "For the assessment of real property heretofore locally assessed, the legislature shall establish tax districts, none of which, unless it be a city, shall embrace more than one county."—thus preserving local assessment of taxes. Then go down to the last sentence; the Committee direction is: "The legislature may however provide for the assessment by state authorities of all the property of designated classes of public service corporations." Now, it seems to me, Mr. President, and Gentlemen of the Convention, that there is not any reason for this exception. There is not any reason why some of the larger taxpayers of a locality, operating wholly within a locality, should have their real and otherwise tangible

property assessed by State authorities. Why constitute any difference between them simply because they are public service corporations from the treatment that is meted out to other large owners of real or personal property within a particular locality? The latter class are assessed by the local assessor. Is there any reason why there should be any difference with regard to public service corporations, provided their property be all in one locality? I can conceive that there might be reasons for separating the assessment of public service corporations where their property extended over a number of counties, and so, in order to accommodate that reason, if such reason there be, I have no objection, as it seems to my mind there is no objection to having the State authorities assess, provided the public service corporations operate in two or more counties, none of which is in a city; that is to say, that if they operate in one county, or outside of one city, then there may be a reason why they should be assessed by State authorities, because it might be said it is impossible to make a fair assessment in different localities of property which is really all merged in its value in one, and where it extends over more than one county. But why do it by this restriction? I am met by the Chairman of the Tax Committee, when I mentioned this Proposed Amendment to him, by his saying that this would keep the State authorities from assessing for the special franchise tax, and on that account I added the second section of my Proposed Amendment: "Nothing herein contained shall interfere with the assessment of special franchise tax by state authorities". Now, with regard to the rest, it seems, Mr. Chairman, that this exception from the wise, proper and general principle of local taxation would never have been written into this Proposed Amendment if it had not been that the circumstance existed of the Chairman of the Taxation Committee being at the same time Chairman of the State Board of Taxation or whatever his legal title is. That is no criticism of the measure, except that it seems to me it has given Mr. Saxe a point of view of State authorities which has perhaps blinded him to the really objectionable character of this exceptional treatment of public service corporations. I may say, Mr. Chairman, that for them I hold no brief. There is not any private interest that I have that is in the least degree tied up with any public service corporation either by attorneyship or stockholding or anything else, but it seemed to me that the Constitution should treat taxpayers in a specific locality alike, whether they be corporations or private owners, and I therefore plead for this amendment. Nay, more, I have been surprised that it was not acceded to by the Chairman of the Taxation Committee, and by that Committee themselves. Of course there is not in the minds of the Committee, members of this Convention, what I am about to say, but to many

of these public service corporations it will look like stepping to the captain's office and settling, and I think on all the grounds stated that local assessments should be had there as well as elsewhere.

Mr. Sharpe — Mr. President, I am opposed to this bill in the form in which it is, and my objection runs to the second section of it. In the third section, by the amendment which was made by Mr. Lincoln some time ago, it is in the power of the Legislature to create larger tax districts and as large as a county or a city, but in personal property they have not included the assessment of personal property; in that relation the second section gives the power to the Legislature, and it will undoubtedly be enforced under the persuasive eloquence of my friend, the Chairman of the Committee on Taxation, to assess personal property in every town in this State by agents sent out from Albany; and not only that, that second section makes that provide that taxes shall be levied from a central office in Albany. I think it a very unwise provision.

Mr. M. Saxe — Will the gentleman kindly point to the language which says that the tax shall be levied from an office in Albany?

Mr. Sharpe — "The legislature shall prescribe how taxable subjects shall be assessed and provide for officers to execute laws relation to the assessment and collection of taxes"—

Mr. Saxe — "Provide for officers."

Mr. Sharpe — Yes.

Mr. M. Saxe — Where will those officers come from?

Mr. Sharpe — I presume they will come from the office of the gentleman's commission.

Mr. M. Saxe — But that is not what the bill says.

Mr. Sharpe — In order to leave the matter where it always has been, a matter of local affair, for ninety per cent.— I think I am not overstating the proportion — of taxes, are raised for the purpose of meeting the expenditures of county, city, town, village and school purposes (and the matter of the State is a matter of equal adjustment), I have prepared some amendments to meet the objection and I move that the matter be referred to the Committee of the Whole with instructions to report forthwith with the following amendments:

Mr. Reeves — If there is any one thing that ought to be emphasized with regard to this provision, it is the necessity, the requirement of some uniformity in the assessment and taxation throughout the State. I have a letter here which comes from a prominent lawyer in this State who has been studying affairs in this particular in Franklin county. It is brief and I wish to read it: "Here is a suggestion which may or may not be of value to the Committee on Taxation.

"In this part of the State, Franklin county, there is great confusion as to the taxation of railroads and, in particular, the telegraph and telephone companies. There is the local assessor, there is the county representative and there is the State Comptroller, each levying some kind of tax, local, property and franchise. The telegraph company run their lines part of the way by wires, part over property owned by private owners whose consent they have, and part over property owned by themselves. There is no uniformity in the books and records kept in the various taxing offices and in the sheets, notices and reports sent out, Some plan should be adopted which will bring regularity out of this chaos." Now, the amendment proposed by Delegate Olcott, simply puts chaos into the plan that the Tax Committee has proposed. This first sentence in the third paragraph provides that the assessment of real property which embraces the special franchises, the real property which has heretofore been assessed, "The legislature shall establish tax districts, none of which, unless it be a city, shall embrace more than one county." Then there is this last sentence: "The legislature may, however, provide for the assessment by state authorities of all the property of designated classes of public service corporations." Then comes this amendment which says that those public service corporations must, in order to come within it, operate in two counties and not be within a city, striking at the very purpose which there is in those two sentences, to require the public service corporations throughout the State to act uniformly, under special franchises, and all the interests that they have can be put under the head of real property. We want uniformity here. We want what that letter calls for. It will not interfere with the designation of local officers, if they wish to do so, but it will give the uniformity that we want if this proposed amendment by Judge Olcott is not adopted, and it ought to be voted down.

Mr. Ryder — It was the aim of the Committee on Taxation to keep out of this bill all legislation, so far as possible, and I think the Committee has succeeded in doing that as well as any committee of the Convention. You will notice all through the proposed article the words "The legislature shall prescribe." "The legislature may, however, provide," etc. The object of the bill is to untie the hands of the Legislature where they are tied too tightly by the present provisions of Section 2 of Article X of the Constitution. It has been found by experimental legislation, in Westchester county, in Nassau county, and others, where reforms have been needed, where the people of the county generally and the officers of the county generally have desired reforms, that they could not get them on account of those provisions. The object of this bill is, then, to permit counties which desire an

advance in the methods of assessment and collection of taxes to procure such advancement at the hands of the Legislature. The county of Westchester desired to have its town assessors assess for all districts in the town, and its collectors collect for all tax districts in the town. Such a law was passed and has given general satisfaction, except in one or two instances where appeals were taken to the courts, and the Court of Appeals, after the case was passed successfully in the lower courts, decided that the law was unconstitutional. This proposed amendment is to enable the Legislature to provide for such cases as that, where it is desired, and precautions are taken in the bill against laws which would be against the wishes of the county by providing through Mr. Lincoln's amendment that the tax district shall not be larger than the town, unless the proposed districts in the county vote for it by referendum. Now, another point which has been criticised is the liberty which is given to the Legislature to provide adequate means for reaching personal property. It is generally understood that real estate now bears the whole burden, or almost the whole burden, of direct taxation in the State. The burden in a few years will be too heavy for real estate to bear alone. The personal property of the State must be brought in and must be assessed. It cannot be done through local assessors. It is necessary that the Legislature should have the option of providing some way for reaching personal property outside of the local assessors. This is left entirely to the Legislature to devise means for. It is not mandatory here. Nothing is provided here, that is not now provided, except that the Legislature is permitted, in its wisdom, to make a broader and fairer tax system than we have at present.

Mr. Burkan — Mr. President, and gentlemen, I hope that Mr. Olcott's amendment will not prevail. It is necessary that we should have a scientific and uniform system of assessing and determining the value of property of these corporations engaged in this exceptional kind of business. A great many companies operating throughout the State engaged in the same character of business will be taxed differently in different sections of the State. If this power is centralized in the hands of the Tax Commissioner in Albany, their specialists who are thoroughly familiar and acquainted with every detail of the business, its operations, they are better qualified to assess accurately and determine accurately the valuation of the properties than would be the city or local assessor. It will result in equality in assessments. It will protect the rights of the corporation as well as of the State. Now, the commissioners of corporations of the department of commerce and labor in their report recommend that in the case of these corporations, these public service corporations, that the power to assess and fix the valuations shall be subject to the State machinery

instead of the local machinery, because it has been found in the States where this practice has been followed that the valuation has been more satisfactory from every point of view. We find that in the State of New Hampshire, the State assessors fix the values of steam and street railroads, express, car, telegraph and telephone companies. We find that in Ohio they have a similar provision; and in Michigan, the Constitution provides that the Legislature may provide for assessment by the State Board of Assessors of railroads, telegraph, telephone, express, car, and other companies, doing a public service business, and the property so assessed must be taxed at the average rate actually levied upon the general property of the State. So you will see, gentlemen, that other States have adopted the practice suggested by this committee and it has been found very satisfactory. It has insured a uniform and scientific method of taxing and determining the value of property, and I hope and trust that this report will be adopted.

Mr. A. E. Smith — Mr. President, I desire to address myself to one amendment introduced by the gentleman from Ulster. Now, I very earnestly hope that that will not be adopted. I think if there is one thing in this State that requires a remedy, and a constitutional remedy, it is more power to the Legislature to be able to deal with the proper taxation and a proper assessment of taxable values and property in this State. We had better not have any personal property tax law whatever than to have it made the subject of a joke, and it is so regarded; and unless there is vested in the Legislature by the Constitution the power to clothe the State Board of Tax Commissioners with the right to assess the property of a corporation that can incorporate with its principal place of business in a certain locality as a matter of convenience, you never can get at the question of a proper valuation of personal property. Now, just what I mean I can illustrate by this situation down in my friend's county in the town of Esopus. In 1915, the population of the town of Esopus was 4,543 people. That is about as large as the election district in New York in which I live. Still, the following well-known corporations gave the town of Esopus as their principal place of business, and I will read you the amount of their capital stock and what the assessor assessed them at, the value he placed on them. The American Druggist Syndicate, capital stock $10,000,000; the local assessor in the town of Esopus, where its principal place of business is, said it was only worth $1,800. A. F. Brumbacher and Company, the big hardware concern, with a capital stock of $30,000, having its principal place of business in Esopus, was found to have personal property of $400. G. C. Gunther's Sons, the big fur house down on Fifth avenue, New York, an

establishment that is enjoying the protection of our fire department, our police department, our health and building departments, our lighted thoroughfares and boulevards and all our water and everything else — and everybody knows where Gunther's is — celebrated for its high class furs — is incorporated with a capital stock of $1,000,000, but up in Esopus they found they had personal property to the value of $8,000. From what I understand, that is about the price of three or four fur coats.

Mr. Brackett — You are not reading the list of Judge Clearwater's clients, are you?

Mr. A. E. Smith — I don't know about it. The Interborough Brewing Company with a capital stock of $1,000,000 — the town of Esopus is probably a dry town, although I don't know, but the local assessors up there fixed their personal property at $1,000 — a brewery for a thousand dollars. If that was the right price on them I would probably own one. The Jamaica Estates and the Jamaica Sea View Realty Company and the Steinway Park Realty Co., and then there are four vaudeville enterprises, theatrical enterprises, one of them with a capital stock of $5,000,000, found to be worth, in its principal place of business, $500. There is a list of them in one town.

Mr. M. Saxe — What is the total amount of the capital stock of those corporations and the total amount of their assessment in the town of Esopus?

Mr. A. E. Smith — Their capital stock is $33,257,370, and the total valuation fixed by the town on all of this property was $60,700.

Mr. Sharpe — Could not the Legislature provide that these corporations can be taxed elsewhere than at the place which they say is their principal place of business?

Mr. A. E. Smith — I don't know whether they can or not. I am not much up on the subject of taxation. I admit that. I have never taken any part in the discussion of that. I have left it to men in whom I had faith, who knew whereof they spoke, but I am pleading for the broadest possible powers to the Legislature for dealing with this subject. If they have it, all right; if they haven't, give it to them. If there is anything else they haven't got, give it to them, because they have got the right.

Mr. Wiggins — Mr. President, this committee spent a good deal of time on this and I dislike very much to disagree with them, particularly with my dear friend Mr. Saxe, but, if a man wanted to beat this Constitution, there isn't anything in it that will beat it quicker than this article.

Mr. Westwood — Except the short ballot.

Mr. Wiggins — Except the short ballot.

Mr. Brackett — Did you say "if a man wants to beat this Constitution"?

Mr. Wiggins — I believe the Legislature controls the matter now, as Mr. Smith said he understood it, and the moment you put this in the Constitution, and if the vote against the Constitution by reason of the fact that the people of the country districts think it means the centralizing of the taxing power in Albany, I call your attention to the fact that you have got a stick of dynamite that is going to blow it galley-axways. That is my firm conviction, based upon my understanding of it, and the information that I got when I went home and heard the people talking about this proposition. The Legislature undoubtedly has the right to regulate these matters now and the people are contending that it should remain there. When you put it in the Constitution, you will rivet their attention upon it and you will rivet the attention of a class of our citizens who otherwise would be very indifferent to the Constitution unless it began to touch the one subject that is near and dear to them, and that is the subject of taxation.

Mr. M. Saxe — The gentleman says the Legislature has the power to regulate it under the present Constitution. If so, why did the Legislature exempt mortgages from local taxation, why did the Legislature exempt secured debts from local taxation, in order to impose a State tax?

Mr. Wiggins — You will have to go to the Legislature and ask them. I have never been there and I do not know anything about it.

Mr. M. Saxe — Because it cannot be done in any other way. That is the reason.

Mr. Wiggins — As I understand, they have done it in the past.

Mr. M. Saxe — They have done it by exempting property from local taxation and if you pursue this course you are drying up the sources of local revenue, and you gentlemen who are trying to support the rural districts are riding blindly into a chasm.

Mr. Wiggins — That sets me back for a while, doesn't it? Well, I may be in the chasm, but you cannot lead the rest of the people out of the chasm by saying that this is going to be a cure-all, because they believe that the matter is already properly regulated. What they have objected to, Mr. Saxe, is this provision, which they think, as Judge Sharpe said, is going to give the right to tax and collect taxes at Albany. Whether it is true or not, I do not know, but you cannot drive that out of their minds, but you are attempting by this provision to centralize in Albany the right to assess and the right to tax.

Mr. Kirby — I disagree with my friend, Mr. Wiggins. There is no subject in which the average home-owner of the rural districts of the State is so much interested at the present time, or

which at certain seasons of the year he will discuss with as much animation as the fact that any of his wealthier neighbors of the community are escaping the just burden of taxation. In the little community in which I live, a community which enjoys a fair degree of prosperity, it may perhaps be of interest to some members of this body to know that I know of one concern, one of the officers of which has told me that over three millions was invested in securities in the State of Nebraska and Iowa, none of which to any extent, or a very slight percentage of which paid any taxes whatever to the community. I know of estate after estate which has been settled in the Surrogates' Courts — I have in mind a litigation in which I was involved, where we proved that the *corpus* of personal property was $247,000 and the deceased in his lifetime bore the honorable distinction of being on the assessment roll for the sum of $2,000 personal property. I know, sir, another instance, where the transfer tax showed that the personal property passing to the heir-at-law was of the value of $350,000 and over, and during the entire lifetime of the gentleman he never paid any taxes upon personal property in excess of the sum of $15,000. If there ever was a measure that was in the interest of the average home-owner in this State, the humble man, the common man, with a little fireside that he desires to protect, that he is willing should bear its even burden of taxation, then it is this measure, and I insist, on behalf of the rural district, — and I am from the rural districts and a farmer, if you so desire to call me — that this is in the interest of the community.

Mr. Mandeville — When this measure was under discussion in the Committee of the Whole, I listened to the discussion and I was afraid, much as Mr. Wiggins is afraid, that it would be unpopular and might lead to disaster as to the action of this Convention. After the measure had been reported out of Committee of the Whole I got several copies and sent them down to the chief assessor of the city of the third class in which I live, and asked if he would examine this bill, look it over carefully, and write me what he thought concerning it. I may say, that he has had 15 years' experience as chief assessor. I had the bill back from him with a letter from him saying he could see no danger in it. He thought it was an admirable measure to promote the equalization of taxation. I therefore felt, acting upon his knowledge, and upon the discussion that I have heard here, that I should support the bill as reported by the committee. I confess that the matter of taxation is a new matter to me, rather a hard one to understand, but, after listening to Mr. Smith of New York, it seems to me that it is in the interest of the people of the State that there

should be a greater equalization of the burden of taxation resting upon every dollar of property, no matter in what form, within the State of New York, and no matter where it is found.

Mr. C. A. Webber — I was very sorry to find that the protest against this bill came from Ulster county, which we had taken for our example. I want, however, to address myself to the question of taxation by the State, or, rather, the assessment of public service corporations. That is the practice in no less than thirty-five States of the Union. It is in the Constitutions of six of the States of the Union. There have been wonderful strides in the last twenty years in the matter of taxation and the State of New York has been away behind. Our hands have been tied and unless we take this action here to-day, they are going to be tied for twenty years more, because it will require a constitutional amendment to untie them. I think it is high time that this, the greatest State in the Union, and the State needing above all other States — because of the immensity of its properties — to be free to tax as it saw fit — that this State should get up and join the procession.

Mr. Unger — The country members of this Convention have so often worked with me on matters that I was in favor of that they may feel perfectly sure that, as a member of the Committee on Taxation, I would not vote for any proposition which would at all injure their interests. I simply want to call their attention to one particular phrase of this matter which may perhaps have escaped attention, and that is as to the makeup of the Committee on Taxation. If there ever was a committee in this Convention on which the country was represented, it is that Committee on Taxation. We have representatives from Saratoga, from Brooklyn — although that is not precisely a rural district, as Judge Brenner will attest; from Cuba, from Warsaw, from Buffalo, which is an upstate center of population, and from Westchester. I think practically all portions of the State were represented on the Taxation Committee. There was a singular unanimity of opinion in regard to this article, as the chairman of the committee attested when it was first presented to the Convention, so that you may feel perfectly sure that everybody who could have any possible interest in this subject was thoroughly represented in the deliberations of the committee.

Mr. Leggett — As one of the country members, coming from the truly rural county of Allegany, I can perhaps be trusted not to impose any hardship knowingly upon the country people. To any one approaching this question of taxation, the first general fact that will strike him will be the chaotic condition of the laws of the various States on the subject of taxation, their unscientific

character, and their failure to reach the sources of revenue. A very short excursion into the literature on that subject will bring it forcibly to his attention, and he will see plenty of instances within his own knowledge which are only explained by that fact. In the State of New York, which is in some respects more fortunate than some of the Western States, the greatest difficulty in reaching a scientific plan of taxation is the provisions of Section 2 of Article X of the Constitution, what is known as the home rule section, probably adopted with no sort of reference to this particular phase, which provides that localities — towns, villages and cities,— must continue to elect or to choose by local appointment the officials to carry on the local affairs of the locality, as they did at the time of the adoption of that section. That has been carried so far that in the Town of Pelham case, which was decided this year, the Court of Appeals has held that local officers, down to towns, villages and school districts, must assess and collect all direct taxes. The Legislature tried in that case to permit the town of Pelham to make the assessments for all the subdivisions of the town, the villages in it, and collect the tax by a general officer. The Court of Appeals decided it could not be done under the provisions of that section. The effort of the Taxation Committee has been largely to cut away the extremely tight knot in which the activities of the Legislature are bound by that section, so as to give the Legislature some freedom, some discretion as to how it should reach both real estate and personal property, but more particularly personal property. Everybody knows that personal property taxation under the direct system is a farce. No one defends it. You cannot find a defender of it anywhere as it is at present practiced. It has been justly and truly said that no one pays taxes on personal property, except women, children, lunatics and idiots. The taxation of personal property that has been effective, such as the mortgage tax, escapes this provision because it is considered to be a recording tax. The taxation of secured debts was made possible practically as an option. The party that owned them had the option of paying on them and then being exempt from local taxation. A direct tax could doubtless quite often be levied by a method of assessment that precluded the local assessor from acting. Another thing we asked for here, and which this article will grant, if adopted, will be the privilege to parties owning real estate in the country to do what they can do now in the cities, that is, to pay their taxes once a year to a well-known official who keeps a record of taxes and of their payment and of the assessment. That is a privilege which you have in all the cities of this State, which no one owning property in the towns has. A property owner there has to

pay a tax, in the first place, to the town collector; he has to pay a tax, if the property is located in a village, to the village collector; he also has to pay a tax to a district school collector. None of those are permanent officers; none of them occupy a permanent office. There is no record kept of the taxes. If you want to find out what the amount of your tax is you have got to go and hunt up that local individual, three of those local individuals. It is a horrible nuisance and it is an inexcusable provision in the Constitution.

The President — The gentleman's time is up.

Mr. Ostrander — I have been quoted as the rural member of this Taxation Committee. I want to repeat somewhat the terms of doubt which I have before expressed about this article. As I have sat here and listened to what is going on in this Convention I have observed the outline of what seems to me to be a very unusual spectacle. It may have happened before in the history of mankind but I have never observed it before. The Chairman of our Committee very seriously says that here are thirty billions of personal property that it is impossible to tax unless this Tax department, which is to be appointed by the Governor, shall have the power to lay the lash on the backs of the owners of that thirty billions of personal property. Now, to me, the unusual spectacle is to see all the chief representatives of this vast amount of personal property coming forward to this Convention with bare backs asking to have the lash put on them. I cannot follow the course of this beyond a doubt; it is too tortuous and too round-about a matter for me to understand. I do not know what it amounts to myself but I feel very much like the boy in school who said, when the teacher asked him if his father owned $20 on Tuesday and agreed to pay $10 on Wednesday and $5 on Friday, how much he would owe on Saturday — he said, "Twenty dollars". The teacher said, "Well, I guess you do not know your lesson very well". And he said, "Perhaps I don't, but I know Pa pretty well". Well I am getting a little old and my faculties are a little dim, I can still see that a straight line is the shortest line between two points. I think that somewhere in this woodpile there is a colored gentleman of large proportions.

Mr. M. Saxe — Mr. President, I trust that neither the amendments of Mr. Sharpe nor the amendment of Judge Olcott will meet with favor on the part of the Convention. With respect to the amendment of Judge Olcott, let me point out this: We are putting into the Constitution the provision that the Legislature may provide for the assessment by State authorities of all the properties of designated classes of public service corporations. If there is any reason for exempting certain corporations because of

their location or because of their operation entirely within a county, it can be done under that article. The matter is left entirely to the Legislature. We should not try to legislate here. The Constitution should be the embodiment of sound principles and not of phases of legislation. With respect to that, we have in the Constitution of the State of Michigan this language: "The Legislature may provide for assessments by the State Board of Assessors, railroads, telegraph, telephone, express and car companies." That provision does designate the classes. We leave it entirely to the Legislature of this State to say what corporations of the public service class shall be assessed by a state board. Mr. President, I know the great fight the people of this State had with respect to the special franchise tax. If this provision had been in the Constitution we never would have had the question of the constitutionality of the special franchise tax. I do not want to see questions of that sort raised in the future. Let us clear the situation, so far as the Constitution is concerned, so that no such question can arise in the future. I hold in my hand excerpts from the report of the United States Commissioner of Corporations to the Secretary of Commerce and Labor. He points out the advisability of centralizing the assessment of this class of property. He points out that there is nothing new in it. New Hampshire, one of the oldest New England States, provides that the State shall administer taxation of steam and street railroads, express, car, telephone and telegraph companies. The State of Ohio, under the provisions of the Langdon Law passed five years ago, providing for a State tax commission, with authority to assess property of public utility corporations and to determine the amount of receipts and capital stock upon which taxes are collected. The State of New York is notoriously behind all other States of this country in the matter of taxation. I showed to you gentlemen the other day from the census reports of the United States government that New York is eighth on the assessment of personal property. In proportion, it assesses less property than Ohio, Massachusetts, Indiana, Texas, Kansas, Missouri or Illinois. Within ten years the maximum of the burden on real estate will be reached in the State of New York. The tax upon real estate is near that limit now. We cannot go any farther with the burden upon real estate unless you want to bring ruin to every community, the ruin that now faces some of the local communities in the Northwest where they have depended almost entirely upon their real estate tax. We have got to look to our personal property for our revenue in the future. What is the trouble with the present situation? It is a very simple thing. Under the present Constitution the Court of Appeals has held in the Metropolitan

case, and only last June in the Pelham case, that the local assessor has the constitutional right to assess property. If you want a substitute for the personal property tax, and we all know it is a failure, and we have got to have a substitute, we have got to find it within the next twenty years, and even within the next ten years in my opinion. You cannot find it under the present Constitution, because if you provide a substitute which will take away from the local assessor his constitutional right to assess personal property you are up against the decision of the Court of Appeals in the Metropolitan case and the Pelham case. Mr. President, I ask for unanimous consent to continue for three minutes. I have got to carry the burden of this argument.

The President — Is there any objection to granting the extension of three minutes? The Chair hears no objection. Mr. Saxe may continue.

Mr. M. Saxe — Mr. President, as I have pointed out, under your present Constitution you can provide no substitute for the personal property tax, and that is all that we are doing by this proposal. It is not true that we are providing here for State assessors to go into the rural districts. If you want it to do that, Mr. Sharpe, the Legislature could do it to-day under the Constitution by exempting the farmer's cow from local taxation, which would not hurt anybody in the city of New York, and by putting a State tax on it; just exempt it from local taxation and put a State tax on it, and that is all there is to it. You have laid the foundation for that in the principle of the mortgage tax law and the secured debt tax law. The Legislature can exempt from local taxation tangible personal property and so take away the sources of local revenue; and mark you, gentlemen, I tell you this seriously in the year of 1915, that before the year 1925, the burden on real estate in this State will be so great that they will have to resort to extreme measures to levy a tax on personal property, and the Legislature will do just as I am telling you now, it will exempt your personal tangible property from local taxation, and if there are violations of the law, it will send the State assessor into the locality to see that the tax is collected, and it will be constitutional. Now, here is an opportunity to get away from it. Here is an opportunity to give power to the Legislature to provide a substitute, which, when it is worked out, will be constitutional, and will not make it necessary to resort to that vicious principle of exempting property from local taxation in order to reach it. Mr. President, this is in the interest of the whole State of New York and it is in the particular interest of the rural districts of the State. My department is in contact with three thousand assessors. We have not heard a word of protest. My

two colleagues, the other commissioners of taxation, are gentlemen from up State. They have been through thirty-two counties of this State. They are in constant contact with the assessors. They have heard no opposition. The Commission is unanimous for it. The Committee after two months' hard work reported it. The Committee of the Whole after a full discussion adopted it, and I say, Mr. President, that the people of the State of New York, if this Constitution is presented to them, after they have had a full discussion and they have heard all sides of this question, will approve it and this article will help the Constitution to get a tremendous vote. So confident am I of that, that if there is any doubt in the minds of the members of this Convention I will gladly support a proposition to submit the taxation article as a separate proposition to the people.

The President — The question occurs upon the amendment offered by Mr. Olcott which the Secretary will read.

The Secretary — On page 2, line 23, strike out the period at the end of the line and add "operating in two or more counties, none of which is in the city, but nothing herein contained shall interfere with the assessment of special franchise taxes by state authorities."

The President — Mr. Olcott moves to recommit with instructions to amend as read by the Secretary and report forthwith. All in favor of the motion will say Aye, opposed No. The motion is lost. The question is upon the motion of Mr. Sharpe. The Secretary will read.

The Secretary — Amend Section 2 by striking out on page 2 all of line 4 following the period and all of lines 5, 6 and 7 and the syllables "with standing" and the period in line 8 and by striking out in line 8 the word "supervision," and to amend Section 3 by inserting after the word "real" in the first line the words "and personal."

Mr. Sharpe — Mr. President, I ask for a division.

The President — The motion is to recommit with instructions to amend as indicated by the Secretary and report forthwith. All in favor of the motion will rise and remain standing until counted. All opposed will rise. The motion is lost. The question is on the adoption of the amendment. The Secretary will call the roll.

Those who voted in the affirmative were: Adams, Ahearn, Aiken, Allen, F. C., Angell, Bannister, Barrett, Baumes, Bayes, Bell, Bernstein, Berri, Betts, Brenner, Bunce, Burkan, Buxbaum, Clearwater, Clinton, Cobb, Coles, Cullinan, Dahm, Daly, Dennis, Deyo, Dick, Donovan, Dooling, Doughty, Dow, Drummond, Dunlap, Eggleston, Eppig, Fancher, Fogarty, Franchot, Frank, Gladding, Green, Greff, Haffen, Hale, Heaton, Johnson, Kirby, Kirk,

Landreth, Law, Leary, Leggett, Lincoln, Linde, Lindsay, Low, McKinney, Mandeville, Mann, Martin, L. M., Marshall, Mathewson, Mealy, Meigs, Newburger, Nicoll, C., Nixon, Nye, O'Brian, J. L., O'Connor, Parmenter, Parsons, Pelletreau, Phillips, S. K., Quigg, Reeves, Rhees, Richards, Rosch, Ryan, Ryder, Sanders, Sargent, Saxe, M., Schoonhut, Schurman, Sears, Smith, A. E., Smith, E. N., Smith, R. B., Standart, Steinbrink, Stimson, Tierney, Unger, Van Ness, Wadsworth, Wafer, Ward, Waterman, Webber, C. A., Weed, Westwood, Whipple, Wickersham, Winslow, Young, C. H., Young, F. L., President — 109.

Those who voted in the negative were: Austin, Beach, Bockes, Dunmore, Dykman, Endres, Fobes, Ford, Jones, Latson, Lennox, Martin, F., Mereness, Nicoll, D., Olcott, Ostrander, Parker, Phillips, J. S., Potter, Saxe, J. G., Sharpe, Sheehan, Shipman, Stowell, Tuck, Vanderlyn, White, C. J., Wiggins — 28.

When Mr. Austin's name was called, he said: Mr. President, I desire to make just this brief explanation of my vote. I wish to say that if the farmers of this State ever find out that under this provision it will be possible for the State to provide an officer who will be able to go out on their farms and say how many cows have you got; how many sheep have you got, and how many tons of hay are in your barn, and to levy an assessment on that — in other words, a State listing scheme for his personal property — if he ever finds it out, make no mistake, something will happen. I cannot consistently vote for this measure, and I wish to be recorded in the negative.

When Mr. Clearwater's name was called, he said: Mr. President, for the purpose and with the understanding that I shall ask to have this amendment separately submitted as consented to by the Chairman of the Committee on Taxation, I vote Aye.

When Mr. Mereness' name was called, he said: Mr. President, I desire to briefly explain and give a reason for my vote. The joker in this bill is in the second section in that part of it providing that the "legislature shall prescribe how taxable subjects shall be assessed" and "providing for officers to execute the laws," etc., "notwithstanding the provisions of section 2 of article 10 of the Constitution" which contains the home rule provisions of the Constitution of the State of New York that have been in every Constitution that the State has ever had and under which the people of all the smaller communities or large communities of the State have had the right to manage their own local affairs. The State is not prejudiced by that, even if the assessors do not assess property as high in one place as they do somewhere else, because the State by its tax commission has the absolute right unquestionably to equalize between the different counties of the State so as

to reduce to an equality so far as all matters of State taxation are concerned. The matter of assessment of personal property I think has proven to be somewhat of a dream. I do not see how any representative of the rural parts of the State can vote for this section. We are told that the assessors up State are not as honest as they are in other sections. I think the state of morality in any one section of the State is about as good as in any other. They cite us an instance that on a certain occasion in the city of Greater New York the real property was increased in value $960,000,000, not because of any sudden spasm of virtue, but because they wanted to borrow $100,000,000 more money; and it seems to me this is the first step to open the doors to the Legislature wide enough to produce legislation which they think will help them out. In view of all these considerations, Mr. President, I vote No.

When Mr. J. G. Saxe's name was called, he said: Mr. President, I want to explain my vote on this amendment. For the reason stated by Mr. A. E. Smith, I am in favor of the second section, although it will undoubtedly have the result pointed out by Mr. Austin. I don't know what the first section means. I am emphatically against the last three lines of the third section, providing that the "legislature may, however, provide for the assessment by state authorities of all the property of designated classes of all public service corporations." More than that. If this particular language is designed to help the public service corporations in matters of taxation I am against it, but I am equally against it if it aims at the public service corporations, because under this particular language it will broaden the power of the governor as to the tax commission so that they could compel a company to come up to the captain's desk in the old familiar way. I vote No.

The Secretary — Affirmative, 109; negative, 28.

The President — The amendment having received an affirmative vote of a majority of all the members elected, the provision is adopted. The Secretary will call the next number on the Calendar.

The Secretary — No. 828, Third Reading, No. 17, by the Committee on the Judiciary, to amend Article VI of the Constitution generally.

Mr. Clearwater — Mr. President, there seems to be some doubt as to the proper method of procedure. I have consulted with my very expert colleagues who surround me here and they are of the opinion that the proper time to offer a resolution that this amendment be separately submitted to the people, in accordance with the suggestion of the chairman of the Taxation Committee —

The President — The question of the manner of submission, the manner and time of submission of the work of the Convention

is an entirely separate function from the adoption of the amendment to the Constitution. It is the execution by a separate constitutional power and the proposal is not in order in the order of third reading.

Mr. Wickersham — Mr. President, there are one or two amendments which I am constrained to propose to the Judiciary article and I will move to recommit the same to the Committee of the Whole with instructions to report forthwith, making the amendments which I shall now submit, and to report the same back as thus amended. The first amendment, merely striking out a duplication of words on page 6 of the final print, No. 828, already on third reading line 8, on page 6, line 8 the words strike out the words "to the appellate division"; the same words occur in the previous line and are therefore superfluous in this line. I am reading from the engrossed copy, Mr. President, because I presumed the Clerk at the desk had the engrossed copy, from the engrossed copy. If not, I will read from the print which is before us in Committee of the Whole. Then, on page 7, of the copy headed No. 828, line 9, strike out the words "to the appellate division" so that the clause will read "appeals to the appellate division from judgments or orders of the appellate term may be taken as of right only" — etc. That will remove a duplication of language. Then I will suggest that these be put as made, Mr. President; I move that the Committee of the Whole be instructed to amend in that particular.

The President — Mr. Wickersham moves to recommit to the Committee of the Whole with instructions to amend as instructed by the Secretary. The Secretary will read.

The Secretary — Page 7, line 9, strike out the words "to the appellate division."

The President — All in favor of the motion will say Aye, contrary No. The motion is agreed to.

Mr. Wickersham — Mr. President, I will next refer to the provision on page 20, line 21, strike out the words "a judicial district other" and strike out line 22 "than that in which he is elected." and insert in lieu of the words so stricken out, the words "the first or second judicial department." So that the clause will read, "A justice elected in the Third or Fourth Department assigned by the Appellate Division or designated by the Governor to hold a trial or special term in the First or Second Judicial Department shall receive in addition twenty dollars a day for expenses, etc.

The President — The motion is to recommit with instructions to amend as read. All those in favor will say Aye, contrary No. The Ayes have it and the motion is agreed to.

Mr. Wickersham — Mr. President, the next amendment I propose is on page 29, line 6, strike out " such further jurisdiction." Strike out all of line 7, and strike out the word " have " at the beginning of line 8, so that the section shall read, that part of the section, " the city court of the city of New York " and say it shall have the same jurisdiction, and so on, line 5, beginning " as it now possesses within the county of New York and the county of Bronx and original jurisdiction in actions for the recovery of mony only in which the complaint demands judgment for a sum not exceeding five thousand dollars."

Mr. Weed — Mr. Chairman, I suppose that will be open to debate?

The President — It is open to debate.

Mr. Weed — The words, that it is now proposed to strike out, were words that we inserted after a long debate in Committee of the Whole, and I should, for one, certainly be very sorry to see this amendment proposed by Mr. Wickersham carried. I don't know whether the amendment is one that is proposed by the Committee of which he is chairman, or whether it is an amendment which has been proposed on his own behalf.

Mr. Wickersham — It is the Committee; I was instructed by the Committee at its meeting to-day to propose this.

Mr. Weed — I accept the statement, of course, although I was not aware that that matter was fully understood in your Committee.

Mr. Wickersham — I don't know whether it was understood or not, but it was voted after some discussion. Mr. President, if the gentleman will yield, perhaps I can explain to him; the purpose was to invest the City Court with common law jurisdiction up to the amount of $5,000, and not to vest it with any equity jurisdiction other than that which it already possesses in the county of New York.

Mr. Weed — I understand, Mr. President, that that is the purpose of the amendment, and I think I understand also the purpose of the Committee of the Whole in inserting these words which are now sought to be stricken out. The purpose of the Committee of the Whole, as I understood it, was to give the counties, all the counties in New York the jurisdiction which the county courts outside of the county of New York, outside of the borough of Manhattan now possess. It is a jurisdiction which has long been exercised by the county court; it is a jurisdiction that tends to the convenience of the residents of the county, and it is a jurisdiction which has been admirably exercised by the judges who have had charge of it; and by taking away this jurisdiction, and by stripping the counties of Queens, Richmond, Kings and possibly, the Bronx, of a court which has equity jurisdiction, then you deprive

the residents of those counties of an opportunity of conveniently coming before a judge and securing the orders necessary in the conduct of the actions and of going before the magistrate, and to go before justices who have shown ample capacity in dealing with this jurisdiction which we have had. In the county of Queens, for which I can more specifically speak, which is a county that is certainly well known to many members of the Convention, but not all, it is the county whose dimensions are about twelve miles long, or more, by an equal length in width, and it is an immense convenience to the residents of the county that they should have some judge resident in that locality to whom they can go for the relief which has so long been accorded to them in these county courts. If you cut off this jurisdiction from the city courts which is already added under the directions of the Committee of the Whole and which is now vested in the judges of the city court, if you cut that off, the residents of those different sections of New York city have got to go over to Brooklyn or to Manhattan for the purpose of securing the necessary orders. In the county of Queens we have had but three special terms a year and in consequence of this infrequency of the terms there is a large amount of this equitable jurisdiction which falls into the county courts. Now, there is every reason of convenience; there is every reason in the proper administration of justice in the past, and there is every reason in the matter of the convenience of these residents of these outlying localities, that this equitable jurisdiction should be retained. I appreciate the fact, Mr. President, that it possibly will tend to interfere or concern the distribution of patronage. But I don't think that is a consideration that this body should take notice of.

Mr. President, I notice that your gavel is raised, and I will cease and leave the discussion to some other man.

Mr. Bayes — Mr. President, I trust this motion of Mr. Wickersham's will not pass. When this matter was up in the Committee of the Whole a few days ago, after full discussion these words were inserted: "Such further jurisdiction in civil actions as is now exercised by county courts." Now, gentlemen, Mr. Weed is quite correct. There are in the city of New York certain outlying counties which have been referred to, and it has been customary heretofore for litigants to go into these county courts and foreclose mortgages and obtain therein equity adjudication. I regard this as an effort to Manhattanize the rest of the city of New York. To the men who do not live in the city of New York, I will state that equity jurisdiction which is useful to these outlying counties does not attach to the City Court of the city of New York in the borough of Manhattan. A few days ago I

spoke to General Wickersham about this, and I understood he was agreeable to have the section amended so as to preserve this equity jurisdiction for the counties of Kings, Queens and Richmond. I understand now he is not at liberty to consent to that amendment, and in consequence those who live in Kings, the delegates here from Queens and I believe from Richmond request this Convention to vote against the proposal of General Wickersham. It is right. We need this equity jurisdiction. It should be preserved. If General Wickersham wishes to limit it so that it shall be applicable only to Queens, Kings and Richmond, we will agree to that, but otherwise we will stand upon the amendment passed by the Committee of the Whole.

Mr. Dykman — As I understand this bill the chief judge, the presiding judge of the City Court may send to the borough of Brooklyn or the county of Kings, from the Bronx or from Queens or from Manhattan a City Court Judge to hold an equity term, and to that I am very much opposed. This City Court ought to be a Commercial Court, a court to try only questions of law and actions where the plaintiff demands a sum of money only. I should like to see the jurisdiction cut down to three thousand dollars and left where it was, for I think that the tendency of these minor courts as you extend their jurisdiction is to pay chief attention to the large cases and forget the small cases, but that is not the object of this amendment. Speaking only to this amendment, I very earnestly hope that this amendment will be adopted, and these words which authorize a judge elected to the City Court in the borough of Manhattan or in the borough of Queens or in the borough of Bronx to be sent by the chief judge on a peripatetic tour through the city of New York — I hope the amendment will not prevail and that the amendment will be adopted. I very earnestly ask my brothers to save us from this court coming to the borough where I principally practice.

Mr. D. Nicoll — The City Court referred to in the report of the Judiciary Committee is constituted as the court in the city of New York, between the Magistrate's Court below and the Supreme Court above. That court in the city of New York, now known as the City Court has jurisdiction on actions of contract and tort of $2,000. We have extended the jurisdiction of that court in actions for the recovery of a sum of money only to $5,000. Our object was to draw cases into the City Court, the smaller cases, and away from the Supreme Court, so as to relieve the pressure on the Supreme Court. All that seems to have been reasonable and sensible. We are composed, as you know, of five counties. In the counties of Richmond, Kings, Queens and Bronx, there is now a County Judge exercising the usual powers

under the statute of County Judges. We have taken those judges and put them in the Court of General Sessions of the Peace, that is the Criminal Court, and we propose to elect in their places in the several counties new men to be known as the City Judges. The question is, should we give to those judges and to the whole court the power, the equity powers, now existing in the County Courts; that is, should we confer upon this City Court generally in the city of New York equity powers. Now, there are no such equity powers existing in the City Court so far as Manhattan is concerned, and we see no reason why such equity powers should exist in the City Court anyway. But, the sole question is a question of convenience. In Manhattan now when we have an action to foreclose a mortgage, a partition suit, a dower suit, or any of the usual equity actions, we go into the Supreme Court. Why should not Kings county do the same? The county courthouse and the supreme courthouse are the same place. You walk from the room of the County Court into the room of the Supreme Court, and why should not the same method, the same practice, and the same procedure in these matters obtain in one county as in another? The only possible inconvenience that could result would be to the person living in Queens, Bronx, or Richmond, but that, as I have pointed out in the Committee of the Whole, is a very trifling inconvenience. If a lawyer in Richmond wants to bring an equity action he can bring it in the Supreme Court. Instead of bringing it in the Supreme Court of Richmond, he would go for his orders to the courthouse in Brooklyn, a very short distance, a matter of less than an hour. The same would be true of the Bronx, where they would come down to our courthouse.

Mr. Marshall — They have a courthouse there.

Mr. D. Nicoll — They have a courthouse up there, Mr. Marshall says; and of course, we all know that you can go from any part of the borough of Queens to the county courthouse in the Bronx in less than an hour. So it all comes down to that, as to whether or not we should not make a homogeneous court for the whole city with the jurisdiction of five thousand dollars in cases where only a money judgment is sought to be recovered.

Mr. F. Martin — When this matter was up before the Committee of the Whole, the Committee amended this section in order to give equity jurisdiction to these courts, and I want to call the attention of the members from outside the city of New York to the fact that in the counties of Bronx, Kings, Queens and Richmond, we are only asking for what we now have and we are only asking for the same jurisdiction as you gentlemen have in every County Court in the entire state. The argument by Mr. Nicoll

that they are trying to make one court for the whole city is not borne out by the actions of the Judiciary Committee. I saw an amendment this morning where the equity jurisdiction was to be restored to Kings and Queens counties, and yet in New York county and in Bronx county the court was to be left without equity jurisdiction. We have a county court to-day and we are well satisfied with it, and that is true of most of the counties of Greater New York. If we are to have the new court, let us have the court with the same jurisdiction, or let our court in the Bronx stand as it is to-day. How can we put in an equitable defense to an action in that court, if equity jurisdiction is to be taken away and one cannot get affirmative relief in case it is shown that the defendant is entitled to it? How are we to foreclose these little mortgages, and the small mechanic's liens, and the partition suits, and how can we dispose of partition suits in our county unless we have some equity jurisdiction? We do not care whether the jurisdiction with reference to the amount of law suits in actions at law is reduced or not. Reduce it to $2,000 if the Committee sees fit. We have no objection to that, but we do want the equity jurisdiction which we now have, and I would like to know who is behind this amendment to take away the equity jurisdiction from our courts. Our courts will be absolutely useless to us unless we have some equity jurisdiction. I have heard a lot of talk about the judges who compose the City Court in New York county, but they are not the judges who are in our county. We are satisfied with our judges. Provide that the judge will have to sit in the county where he is elected and that will be satisfactory to us, but give us a court which will be a court and which will be of some use to the people of our county. I appeal to you gentlemen from the country districts who have a county court, you who know how valuable the county court is, I appeal to you to restore this equity jurisdiction and give us a court which will be worth something to the people of our county.

Mr. Steinbrink — Let me say to the gentlemen who do not live in the city of New York that the only reason that the Legislature from time to time has, by code provisions, added to the jurisdiction of the County Court is because in the country districts there is no resident Supreme Court justice who can sign the ex parte orders, who can attend to the foreclosure cases, the partition suits, commitments of insane persons, and matters of that kind.

Now, in the city of New York, within thirty minutes, at any hour of the day or night you can reach a Supreme Court judge. It does not make any difference — When you want a judge, whether it is in Kings county or Queens county, you can get one,

and while it is true that in Richmond county there is not a term every month, the new courthouse, which will be at St. George, is thirty minutes, less than thirty minutes away from New York county. Now, I agree entirely, after listening to the argument before the Judiciary Committee, that this jurisdiction should not be conferred upon this court. It was intended as a commercial court and not as a miniature Supreme Court. If you do this, you make your system top-heavy again, and you will have a congestion of business in the City Court and a lack of business in the Supreme Court. Now, one other thing and that is as to just how this is worded. When this amendment was adopted there was some little upset on the floor. The gentleman from Queens drafted this amendment and the gentleman from Kings withdrew his, and the amendment offered by Mr. Frank was hurriedly adopted, and it is this, that it confers upon the City Court of the City of New York throughout the city such other jurisdiction in civil action as is now exercised by County Courts. Well, if it does that and if within one county a County Court has jurisdiction to foreclose a mortgage and if you are going to give that jurisdiction to the court throughout the city of New York, then you will have a foreclosure on Kings county property in an action up in the county of the Bronx, or a foreclosure on Richmond county property in Queens. Don't tell me that the code says differently, because you are writing into your Constitution the sections of the code, and that is where you fall into the serious error, and it should not be done, and I hope that the amendment offered by Mr. Wickersham will prevail.

Mr. Latson — Mr. President, this situation, I think, was brought about originally by an amendment which I proposed in the Committee of the Whole. I was prompted to offer a suggestion with reference to the jurisdiction of the City Court, because I discerned the primary object of the Judiciary Committee, namely to relieve the congestion in the Supreme Court. That was their primary object, and the means that were adopted in my opinion fell short of that purpose. We, I think, as practicing lawyers have come to forget, or we have tried to forget the line of demarcation between law and equity. We like, when we go into the courtroom, to be able to try out our issues, and there, so far as possible, see that they are completely disposed of in order that substantial justice may be done between the parties litigation there. That was the thought that I had in my mind and I thought if those powers and that jurisdiction were to go to the City Court, and that it would bring to the bench that dignity which is so consistent with it, that we would secure a court which would serve its purpose and at the same time relieve the Supreme

Court. So the amendment which I originally offered was that equitable jurisdiction be conferred upon the City Court. That was met with objection and the thought was presented that that would create a court of concurrent jurisdiction with the Supreme Court, and that objection found a response in my mind. I saw that my suggestion, perhaps, went too far, but if in addition to appropriate financial limitation, there was given the full equity jurisdiction, I thought that it would be a very decided help in the direction which the Committee on the Judiciary seemed to be progressing. Now, in the middle of the discussion there came this thought with reference to conferring upon the City Court the present jurisdiction of the County Courts, and it was finally adopted in the Committee of the Whole as something in the nature of a compromise between the extreme views that had been expressed upon the floor of the Committee of the Whole. At that time I took occasion to remind those practitioners from the upper part of the State of the nature of our judiciary system in the city of New York, with its Municipal Court of $1,000 jurisdiction, then the Supreme Court, the County Courts lying in these other counties, and the City Court of Manhattan, in New York, and then what would happen? When you take away the County Court and then extend the City Court, you are depriving all these counties except Manhattan and Bronx, you are depriving all of them of certain equitable jurisdiction which the County Courts now possess. I think that is a mistake. That is as it now stands. The work of the Committee of the Whole was the result of a contribution of thought and in effect a compromise between extreme views, and I think it would be a great convenience to the bar, it would be a great convenience to the litigants who litigate in the City Court, to have this equity jurisdiction now possessed by the County Court, and I think it would be a very great hardship and inconvenience if General Wickersham's amendment prevails. It seems to me that the matter was so thoroughly threshed out at that time, and this same thought, so thoroughly expressed, that there ought to be some good reason besides that given why the views of the Committee of the Whole as then expressed should be reversed.

Mr. Frank — Mr. President, it has been stated that this matter has been pretty thoroughly threshed out. It was pretty well discussed the other day in the Committee of the Whole. It is quite apparent from the remarks made to-day and last Monday that some of the leading members of the bar and of the Judiciary Committee are not in the least familiar with the practice which obtains in the County Courts. I venture to say that Mr. Wickersham, Mr. Nicoll, Mr. Dykman and Mr. Marshall have not had

occasion to enter the County Court. Their business, most of it, is transacted in New York county, or in Kings county, where they go with equal facility to either of these courts and obtain such relief and such signatures as they may require. Mr. Nicoll tries to mislead the members of this Convention by the statement that it takes but an hour to reach Brooklyn from any part of Queens, but I shall not attribute to him a desire to intentionally mislead, but I will simply attribute to him an unfamiliarity with the facts. As a matter of fact, Mr. President, I happen to know how long it takes to go from Queens to Brooklyn, and to obtain an order from Special Term and return to my office in Queens; it takes more than half a day to go there and get your papers signed and come back. Frequently I have to go the next day and see whether the paper has been properly entered and in order to make up my office copies and copies for further use in the matter. It will be a great hardship to the outlying counties if the County Courts are abolished as is intended, and nothing in the way of a substantial substitute is given to us. We don't want the City Court. We are not asking to have anything that we have not now. We have our County Courts, which have been in existence for years and years. They have this equity jurisdiction which we are seeking to give to the City Court. Leave us our County Courts. Leave them as they are and we are contented. We don't care about the $5,000 jurisdiction. We are satisfied to have it at $2,000, but we do want to retain the equity jurisdiction which we now have. I hope that this proposed amendment by Mr. Wickersham will not prevail, and that you will leave to the counties of the city of New York which now have it, the equity jurisdiction of the County Courts.

Mr. Donnelly — I offer the following amendment to the amendment.

The President — The Clerk will read the amendment to the amendment.

The Secretary — By Mr. Donnelly. Page 29, line 6, strike out "Such other jurisdiction." Strike out all of line 7 and in line 8 strike out the word "have" and insert the following in line 10 after the word "dollars": "Such courts shall have in the boroughs of Queens and the Bronx equity jurisdiction now possessed by the county courts in the counties of Queens and Bronx."

Mr. Richards — Mr. President, I move to amend that amendment of Mr. Wickersham's amendment by adding the word "Richmond."

Mr. Donnelly — Mr. President, I will accept the amendment proposed by Mr. Richards in both places.

Mr. Nicoll — Mr. President, I want to say if we adopt any

amendment of that sort, we would have the most anomalous court in the world. We would have a court in which there was a judge in Manhattan who had jurisdiction to try a case of $5,000, whereas, if you go into the subway and cross over to Queens, or went over to Richmond, you would find a judge of the same court who would have equity jurisdiction. So you would have the judges of the same court in one county with only common law jurisdiction, and the judges of the same court in another county with equity jurisdiction plus the common law jurisdiction. Was there ever such a court as that in the history of the courts?

Mr. Latson — I think it is perfectly apparent that a diversity of views exists with reference to this matter, and there are localities having some interests that are not properly taken care of in any of the suggestions that have been made. I feel after conference with one or two of my associate delegates about me, that we would save time, we would make progress, if the committee should now take a recess, and at half past eight, presumably, an appropriate amendment with reference to this matter can be prepared covering the different interests represented. I offer that as a suggestion.

Mr. J. G. Saxe — I move to strike out the word "five" on page 29, line 10, and insert in its place the word "three." My motion is to recommit, to have that done, and come back to third reading, page 29, line 10, the word "five" to be stricken out, and the word "three" inserted. This is the first word I have had to say on the judiciary article, and it is the last word I am going to have to say. I am more earnest on this than on any subject that has come before the Constitutional Convention and if this amendment is not carried I shall feel that our work in this Convention is in vain. Now, Mr. President, I am in earnest, and I ask the delegates to bear with me. I have practiced fifteen years in New York city. I know what the younger members of the bar in New York city want. What is this proposition? That we take this city court, the poor people's court of New York city, and increase its jurisdiction from two thousand dollars to five thousand dollars. There will be no conceivable way to get to the Appellate Division of the Supreme Court or to the Court of Appeals even though the new appellate term may vote two to one or though an important question of law may be involved unless the Appellate Division grants leave to appeal. There is no way you can get the most important question of law reviewed except by leave of the appellate term. The lawyers who practice in New York city know a large proportion of the cases are brought by unworthy lawyers and involve no right whatever and yet they are the kind of claim on which they can get a jury verdict. Under this new five thousand dollar jurisdiction, 80 per cent of the liti-

gation in New York city could be brought in this city court with no conceivable way of reviewing the most important question of law as a matter of right. Now, I submit that that is something which is really terrible to the litigants of New York city. I have begged Mr. Wickersham in the last few weeks to reduce it from five to three thousand, and I understood he agreed to do it, and with this five thousand dollar jurisdiction on the city court, the poor man's court of New York city, and allowing the big blackmail litigation to get before that, before the judges and jury, in that court, with no review by the Appellate Division or the Court of Appeals, we are going to create a situation in New York city absolutely unfair to the great mass of litigants. I hope Mr. Wickersham will agree to that amendment, but if he does not I am frank to say I don't know where we are going to land with the judiciary article. I, for one, will be emphatically against it, and shall do what I can to protect the litigants and the bar of New York city.

Mr. Bayes — I would like to ask Mr. Donnelly if he would include the county of Kings in his amendment?

Mr. Donnelly — I ask unanimous consent to withdraw the amendment, the substantial part of it, and offer the following, which shall embrace all the counties of New York. I ask unanimous consent.

The President — Unanimous consent has been asked for the withdrawal of the amendment by Mr. Donnelly, and the substitution of a new amendment, to carry with it the amendment by Mr. Wickersham. Is there objection? The Chair hears none. Unanimous consent is granted.

Mr. Donnelly — I ask that the amendment be read.

The President — The Secretary will read the amendment. The Secretary advises the Chair that Mr. Donnelly has not indicated where his amendment is to go.

Mr. Donnelly — The amendment, this part is to be substituted as a substantial part of the amendment, to follow after the word "dollars."

The President — Are there any further motions? The time is rapidly wearing away, and such motion must be in or cannot be acted upon.

Mr. Dahm — Mr. President, I offer the following amendment.

Mr. Schurman — Mr. President, I have one.

The President — Mr. Dahm's amendment was the first to reach the Chair.

Mr. Wickersham — On behalf of the Committee I have an amendment to offer to another section, but I thought we had better dispose of this section first.

Mr. Leggett — I have one to another section.

The President — The delegates will send their amendments to the desk, to be acted on in order.

Mr. Wiggins — I desire to offer the following amendment.

Mr. Dahm — I ask that the Secretary read my amendment.

The President — It cannot be read now, it will be read in its order. Mr. Schurman proposes an amendment.

Mr. Schurman — I sent up one to the desk, Mr. President. I should be glad to explain it if this is the proper time. I have hesitated up to this moment to utter a single word on the judiciary article. We discussed the judiciary article for three or four days in Committee of the Whole, and as I say, I have not the temerity to make a suggestion, and I thought I would not utter a single word. If it had been the Convention of 1821, when there were 68 farmers here and only 37 lawyers, I might have felt differently; or if it had been the Convention of 1846, with 42 farmers and 48 lawyers, I might have felt differently. But here we have a Convention with three-quarters of the members lawyers, and it seemed to me unbecoming for a layman to attempt to contribute anything to the question under consideration. But, Mr. President, the discussion here in this chamber in Committee of the Whole threw on one section of this Proposed Amendment a light that made it clear, made its meaning and significance clear, not only to the uninitiated layman, but to the least unsuspecting citizen of the State of New York. Whatever else Section 8 does it establishes a sort of pension system for judges. We are told in that respect it simply follows the practice of the Legislature. Well, Mr. President, some of us have occasion to know — Mr. Stanchfield will bear me out — that even good practices are not always written into the Constitution. But if the Legislature has established a practice of this sort, it may perhaps be more honored in the breach than in the observance, and I move, and have sent an amendment to the desk, to strike out in Section 8, page 12, line 15, everything after the period. Page 12, line 15, everything after the period. Page 12, line 15, down to and including on page 13, the word "law," line 7. Page 12, and page 13, I speak about. On page 12, I repeat, line 15, strike out everything after the period down to and including page 13, line 7, to and including the period. And Mr. President, I also move that there be stricken out in line 8, page 13, the words "and official referees." My motion is that this be recommitted to the Committee of the Whole with instructions to report forthwith with this amendment.

Mr. Leggett — My amendment is the same as Dr. Schurman's with the addition of a provision that shall prevent the recurrence of the appointment of such things as official referees and I would ask the Clerk to read the last part, the insertion.

The President — There being no objection, the Secretary will read the amendment of Mr. Leggett.

The Secretary — Page 13, line 8, at the end of the section, add, "Former judges and justices of any court shall not be appointed to any public office having judicial functions."

Mr. Leggett — Mr. President, the emphasis in that is on the word "appointed." "Former judges and justices of any court shall not hereafter be appointed to any office having judicial functions." There would be little use in our striking this out of the Constitution if we left the Legislature free to go on and do the same things they have done.

Mr. Wickersham — I hope no such provision as that will prevail.

Mr. Leggett — I would like to say a word. This provision that is in this section has been acknowledged by the Committee or by its representatives to be intended to give pensions to judges, and that, in the face of the fact that the people of the State have condemned pensions for judges, in the face of the fact that they have decreed that after judges become seventy years of age they shall cease to be judges, in the face of the fact, again, that as to all those who would benefit by this under seventy years of age, that the people have failed to re-elect them. Now, I have no objection to these gentlemen going back to the people and asking to be re-elected as judges. My amendment will prevent them from ever being appointed by the acts of their friends, the courts, or other judges, when the people have said they did not want their judicial functions any longer.

Mr. Wickersham — I desire to make just one observation. I submit, by direction of the Judiciary Committee, an amendment to Section 8, regarding the official referees, proposing to strike out the words on lines 18 to 20, reading: "or fourteen years as a judge of the court of appeals or a justice of the supreme court." Strike out in line 20, the words: "who shall have" and insert at the end of the line the word "five," so that it will read: "The official referees now in office are continued, and any judge of the court of appeals or justice of the supreme court who at the time of his retirement from office shall have served as a judge of record in this state for twenty years and attained the age of sixty-five years, may be appointed as an official referee." Now, Mr. President, I desire to make one statement. This subject was brought before the Committee on Judiciary by three different proposals introduced in this body by delegates. The Legislature, beginning in the year 1895, created the office of official referee. It has been gradually extended until it now has made it possible for the Appellate Division to appoint judges of the Court of Appeals, of the

Supreme Court, of the City Court of the city of New York, and of the Municipal Court to these offices. The courts have not actually carried out that power, but the power has been given. The principal consideration which the Judiciary Committee had in mind in framing the amendment suggested here was to restrict the Legislature in the exercise of that power so that it should not be extended to judges of all sorts of inferior courts who were without the prime consideration that seemed to have moved the Legislature originally to create the office of official referee. We felt that it had become an abuse. Of course, it is said that it creates sort of a pension system. As a matter of fact, with one or two exceptions, all of the official referees who have been appointed are engaged in doing useful and valuable work for the communities in which they are appointed. We recognized the objection that would be made to it, the easy talk that it is merely a pension system; the difficulty of explaining that it is a means of utilizing the experience of men who have been twenty years on the bench as judges of a high court and who, contrary to the principle, which unfortunately democracy so generally applies, instead of flinging them out as soon as they have gotten to a certain point, when their official term was over, it was proposed to utilize in the very important work which is done by referees, standing commissioners, and in the subjudicial work of the courts. Now the subject is before the Convention. I do not propose to add anything else to it, but I do not propose to have the matter brought here merely as a subterfuge for a pension, because it was the effort to save what was valuable in the system and restrict the action of the Legislature in extending the system.

Mr. Stimson — In the very brief time we have, I merely wish to say that I sincerely hope the amendment offered by Mr. Saxe, reducing the jurisdictional amount in controversy in the City Court, will prevail. It seems to me that is one of the most important of these amendments, and that the consequences which Mr. Saxe said would flow from the increase of that jurisdiction have not been exaggerated. It seems to me that this is one of the most glaring instances of the following of that course which was commented on in the previous Convention, of how these smaller courts tend to grow. This will increase the jurisdiction to an extent which would produce, in my opinion, very serious evils. In the second place, although I have listened with great respect to the arguments which prevailed in the Judiciary Committee, in respect to the official referees, I sincerely hope that the amendment offered by President Schurman will carry. It seems to me that that is the only one which meets the situation, and that the objection to the continuance of the provision, even as amended by the

present proposition of the Committee, will continue, and the criticisms which have been excited by it will not be met except by action such as is suggested by the amendment of President Schurman. The real criticism of that is that it is a really disingenuous attempt to create a pension system in principle, without doing it outwardly. In prescribing the qualifications of these official referees and prescribing that they must necessarily be above a certain age, the amendment, on its face, shows that it is not seeking to obtain referees from the point of service. Such a provision as that has never been in the Constitution before and I think it should not be put in now.

Mr. Lincoln — I send two amendments to the desk. The other night in the Committee of the Whole the question of impeachment was up and I took a certain position there, which with the small attendance that was there, was voted down. I am perfectly willing to accept that decision but at that time the argument was made against me that the amendment now contained in the article relating to impeachment is necessary in order to save the time of the courts of impeachment and I insisted at that time that the time of the court of impeachment was really taken up not by taking testimony but by the time spent in determining whether or not the court had jurisdiction, and whether impeachment lay for acts which were committed prior to the incumbency of the official or only for acts which occurred during his incumbency.

Mr. Wickersham — Is the amendment which you have offered the same as the one which was debated in Committee of the Whole and which I think was voted down there?

Mr. Lincoln — It is not.

Mr. Wickersham — May it be read then so that we may understand what it is?

Mr. Lincoln — Certainly.

The President — Without objection, the amendment will be read.

The Secretary — By Mr. Lincoln: Page 21, line 11, after the word "elected" insert "or acts committed either before or during the term of office of the official impeached."

Mr. Lincoln — Just a word more, Mr. President. I have also sent another amendment to the desk which contains the exact converse. I would like to see whether this Convention is willing to put itself on record, one way or the other, and I am sure I do not care which, in regard to providing in this Constitution that a Governor or any other official may be impeached for acts during his term of office or for acts which occurred prior to and during his term of office. I have sent the two amendments to the desk.

Mr. Donnelly — On page 29 of the amendment which I presented a few moments ago, and which I had no opportunity to

explain to the Convention, I follow General Wickersham's amendment in part. On page 29, General Wickersham's amendment was to strike out on line 6 the words "such further jurisdiction," all of line 7 and the word "have" in line 8. I propose that in line 10, after the word "dollars" this shall be added: "Such court shall have likewise the equity jurisdiction now possessed by the county courts, but such jurisdiction shall be exercised only within the respective counties of such city by the judges elected within such county." That amendment meets the objection of Mr. Steinbrink, who says there is going to be a rotation of judges from one county into another, and that a piece of property in one county can be foreclosed in another. It provides that the exercise of jurisdiction shall be limited to the county and shall be exercised by the judge elected in that county. It seems to me that that amendment should be satisfactory to all the warring elements from the respective counties of New York and I trust that the men from up the State will give to this court the right to have the same jurisdiction that they now possess in county courts up the State. They know how convenient these courts are to go into when it is essential to obtain an order of foreclosure or to do some act with reference to the equity powers of those courts. We have heard that the city of Washington is a city of magnificent distances. I want to say to you men from up the State that the city of New York is a city of magnificent distances for the men in the far corners of Queens and the far corners of Richmond, looking for a Supreme Court judge to exercise some equity power. This court should have the same equity jurisdiction which the county courts exercise. That, as I know, is quite limited, but it is essential for the proper conduct of justice within a given county that this new court shall have that power, and I think the amendment which I have offered meets all the objections about rotation and the conflict of power in the respective counties.

Mr. Hale — Mr. President, I desire to second the nomination — the amendment offered by Dr. Schurman. I do it not only in behalf of the people, including the lawyers and the judges of the 34th district, but of the fourth judicial district, as far as I know. I certainly do it at the request of some of the judges of that district. I desire to read this much from a letter which I received yesterday morning from one of the judges in the fourth judicial district: "I do not believe that the judges of the state as a body would approve of the bill. (That is the provision in regard to official referees.) It seems to be class legislation based upon no reasonable foundation. I am very much opposed to it and trust the bill will meet defeat." In the year 1891 a judge who had served nearly fourteen years was about

to retire at the end of his term. He was a candidate for renomination — as I remember it, he had six years left in which to serve — that he might serve the people of that judicial district. There was no criticism of him. He was respected. And yet the opposition of the people of that judicial district to the pension system as it then stood was so great that they denied to him a renomination. The opposition that obtained in that part of the State and which was felt over the entire rural portions of the State was so great that the Constitutional Convention of 1894 put a stop to further existence of the so-called pension system. At that time the salary paid to the Supreme Court Justices was $6,000, with an allowance of $1,200 for expenses, or a total of $7,200. That went on until the year 1909 when the salary was advanced to $10,000 for the judges that held trial and special terms and $12,000 to those who sat in the Appellate Division and $12,500 to the presiding justice of the Appellate Division. That is where they stand to-day. The feeling on the part of every Supreme Court Judge in my district that I am acquainted with, and I think I know them all and know them well, is that they are well paid; that they deem the position the greatest, next to that of the Court of Appeals, that is possible for a lawyer to occupy. They are satisfied that they do not want the blot of the pension system against them.

The President — The time for debate has expired.

Mr. Coles — I should like to offer one amendment to the 29th section.

Mr. D. Nicoll — I have sent an amendment to the desk, pursuant to the direction of the President.

The President — The amendment will be read and submitted in its proper order.

Mr. D. Nicoll — I have an amendment to the section on page 26. I will explain it when the time comes.

Mr. President — The Chair will submit the question of unanimous consent for the reception of Mr. Coles' amendment. Is there objection? The Chair hears none. Mr. Coles will send his amendment to the desk.

Mr. Coles — I have already sent it.

The President — The Chair must insist upon the enforcement of the rule. No amendments can be voted upon except those which are already pending. The first subject-matter before the Convention is the amendment offered by Mr. Wickersham, and the first question before the Convention is the amendment to that amendment offered by Mr. Donnelly. The Clerk will read.

Mr. Weed — Mr. President, I did not understand that that was an amendment to Mr. Wickersham's amendment. It is something to be put down at the end of the sentence. I suppose the

vote should first be taken on Mr. Wickersham's amendment and then proceed to vote on this other proposition.

The President — It was offered as an amendment to Mr. Wickersham's amendment.

Mr. Weed — I did not so understand it, sir. It is not a substitute. It comes down at the end of the sentence. Mr. Wickersham's amendment is at the first part of the sentence.

The President — The amendment by Mr. Donnelly was offered as an amendment to Mr. Wickersham's amendment.

Mr. Donnelly — Mr. President, it really is a separate matter. It accepts the striking out made by Mr. Wickersham's amendment and is a part of it in that sense.

The President — It is an amendment to Mr. Wickersham's amendment.

The Secretary will read the amendment to Mr. Wickersham's amendment offered by Mr. Donnelly.

The Secretary — Page 29, line 6, strike out the words "such further jurisdiction." Strike out all of line 7, and strike out the word "have" in line 8 and insert the following in line 10 after the word "dollars": "Such court shall have likewise the equity jurisdiction now possessed by county courts but such jurisdiction shall be exercised only within the respective counties of such cities by the judges elected within such county."

The President — All in favor of the amendment will rise and remain standing until counted. The gentlemen will be seated. All opposed will rise. The amendment of Mr. Donnelly to Mr. Wickersham's amendment is adopted. The question is upon recommitting to the Committee of the Whole, with instructions to amend in accordance with the manner in which Mr. Wickersham's amendment is amended by Mr. Donnelly's proposal, and to report forthwith. All in favor will say Aye, contrary No. The Ayes appear to have it, the Ayes have it, the motion is agreed to. The next question is upon the amendment of Mr. J. G. Saxe. The Clerk will read.

The Secretary — By Mr. J. G. Saxe: Page 29, line 10, strike out the word "five" and insert the word "three."

The President — All in favor of the motion to recommit to the Committee of the Whole, with instructions to amend as indicated and report forthwith, will say Aye, contrary No. The Ayes appear to have it. The Ayes have it, and the motion is agreed to. The question now is upon the amendment offered by Mr. Dahm. The Secretary will read.

The Secretary — Page 12, to amend section 8, by adding after the word "standing" in line 11 the following: Page 12, line 11, after the word "standing" add "who are not related to any of the justices of such department."

The President — All in favor of the proposal to recommit with instructions to amend as indicated will rise and remain standing until counted. The gentlemen will be seated. All those opposed will rise. The delegates may be seated. The motion is lost. The next question is upon the motion of Mr. Schurman which the Secretary will read.

The Secretary — Amend section 8, by striking out all after the period in line 15, page 12, down to and including the period in line 7 on page 13, and by striking out also the words "and official referees" in line 8, page 13.

Mr. Schurman — I ask for a division, a rising vote.

The President — All in favor of the motion of Mr. Schurman will rise and remain standing until counted. The gentlemen will be seated. All those opposed to Mr. Schurman's motion will rise. The gentlemen will be seated. The Secretary reports the vote in favor of the amendment to strike out, 85; opposed, 29; so the motion prevails. The bill is recommitted with instructions to strike out as indicated and report forthwith.

Mr. Dunmore — I sit so far back I did not understand the time had gone by to offer amendments, and I have an amendment that the Judiciary Committee has consented to, and I ask unanimous consent that I may offer that.

The President — Unanimous consent is asked that Mr. Dunmore's amendment be considered as being submitted before the close of the hour. Is there any objection? The Chair hears none. Consent is granted. The question is upon the motion of Mr. Leggett which the Secretary will read.

The Secretary — Page 12, line 15, strike out all after the period following the word "appointed"; and on page 13, strike out all from the beginning down to and including the period following the word "law" in line 7.

Mr. Stanchfield — Mr. President, a point of order. That is what we just voted on. That was the amendment of Dr. Schurman.

The President — The Secretary will proceed.

The Secretary — Also in line 8, strike out the words "and official referees." At the end of the section add, "Former judges and justices of any court shall not be appointed in any public office having judicial functions."

Mr. Leggett — May I withdraw the first part, the part which Dr. Schurman's motion covered, which has already been carried?

The President — Mr. Leggett asks permission to withdraw the first part of his motion. Is there objection? The Chair hears none. It is withdrawn.

Mr. Leggett — And may I have unanimous consent to add and

perfect the insertion, by adding the words " by any judicial officer or officers."

The President — Is there any objection?

Delegates — Object.

The President — Objection is made, and the motion cannot be changed.

Mr. J. S. Phillips — Mr. Chairman, I want to call attention to this proposal of Mr. Dunmore —

The President — No debate is in order. The question is upon the amendment of Mr. Leggett which in its present form the Secretary will read.

The Secretary — Page 13, section 8, at the end of the section, add, " Former judges and justices of any court shall not be appointed to any public office having judicial functions."

Mr. Brackett — Mr. President, I rise to a point of order.

The President — The gentleman will state his point of order.

Mr. Brackett — The point of order is that the Schurman amendment having been adopted, this language is not apt for the end sought. I agree entirely with the delegate from Allegany, but this language would prevent the appointment by a court of any ex-judge as referee. It ought to be that the Legislature shall not create any office of that kind.

The President — The Chair will not waste time by pointing out the character of the point of order. The question is on the amendment of Mr Leggett to recommit with instructions to add the words "read by the secretary." All in favor will say Aye, contrary No. The motion is lost. The question is upon the motion of Mr. Wiggins.

Mr. Wiggins — Mr. President, to expedite matters, as it is embraced in Dr. Schurman's amendment, which has been passed upon, I will withdraw it.

The President — Mr. Wiggins' motion is withdrawn. The question is upon the amendment offered by Mr. Burkan. The Secretary will read.

The Secretary — Page 7, line 9, strike out all after the word " only." Strike out all of line 10 and all of line 11 to the period and substitute in place thereof the following: (1) Where one or more of the Justices who heard the case dissents from the decision of the Court. (2) From a judgment or order entered upon the decision of any appellate term of the Supreme Court which finally determines an action or special proceeding commenced in the City Court of the city of New York where is directly involved the construction of the Constitution of the State or of the United States, the statutes of the State, or any charter of the city of New York, but the jurisdiction of the Appellate

Division in such cases shall be limited to the review of questions of law. (3) From an order granting a new trial in an action commenced in the City Court of the City of New York where the appellate term stipulates that upon affirmance judgment absolute shall be rendered against him. (4) From an order or judgment of the appellate term reversing or modifying a judgment of the trial court in an action commenced in the City Court of the City of New York. (5) When the appellate term on reversing or modifying a judgment make new finding of fact and render judgment thereon.

The President — All in favor of the motion will say Aye, contrary No. The motion is lost. The question is now on the motion of Mr. Wickersham. The Secretary will read.

The Secretary — By Mr. Wickersham. Section 8, page 12 —

Mr. Wickersham — Mr. President, that amendment involves the same subject matter as is embraced in Dr. Schurman's amendment, carried. Therefore, I withdraw it.

The President — The amendment is withdrawn. The question is on the motion by Mr. F. Martin. The Secretary will read.

Mr. F. Martin — I have had no opportunity to explain that amendment, and it is quite important, and while I don't speak for the Court of Appeals on the subject, I know they are in favor of this amendment.

The Secretary — Page 14, line 16, after the word "appeals" insert "if in the opinion of said court it is deemed advisable may," and strike out on said line 16, the word "shall."

The President — All in favor will say Aye, those opposed No. The motion is lost. The question is on the first motion of Mr. Lincoln. The Secretary will read.

The Secretary — By Mr. Lincoln, page 21, line 11, after the word "elected" insert "for acts committed either before or during the term of office of the official impeached."

The President — All in favor of the motion will say Aye, contrary No. The motion is lost. The Secretary will read the second proposed amendment by Mr. Lincoln.

The Secretary — By Mr. Lincoln, page 21, line 11, after the word "elected," insert "but only for acts committed during the term of office during which the official is impeached or for acts by which the official was nominated or elected for such term."

The President — All in favor of the motion will say Aye, contrary No. The motion is lost. The next question is on the motion of Mr. Delancey Nicoll. The Secretary will read.

The Secretary — Page 26, lines 5 and 6, strike out the words "or in any boroughs contained within a city or within districts created for that purpose."

Mr. D. Nicoll — Mr. President, may I explain that amendment?

The President — The delegate will sit down. The question is on the motion. All those in favor will say Aye, contrary, No. The motion is lost. The next question is on the motion of Mr. Coles. The Secretary will read.

The Secretary — By Mr. Coles. To amend Section 29, page 34, line 15, strike out the words "judicial authentication" and "guaranty."

The President — All in favor of the motion will say Aye, contrary No. The motion is lost. The question is on the amendment offered by Mr. Dunmore. The Secretary will read.

Mr. Dunmore — May I say that is on page 10, line 3, of the file of the members, but it is on page 8, the last line of the revision. It has been accepted by the Judiciary Committee.

Mr. Wickersham — Page 10, line 3. I understand that it is to be inserted on page 10, line 3, after the word "provide."

The Secretary — Page 10, line 3, after the word "provide" insert "or between conflicting claimants," so that the sentence as amended shall read "The court shall have the jurisdiction now exercised by it and such additional jurisdiction to hear and determine claims against the State as the Legislature may provide, or between conflicting claimants."

Mr. Stimson — I would suggest that Mr. Wickersham was in error. It should have come in after "state."

Mr. Wickersham — It should come after "state."

Mr. Dunmore — May I read it as it is —

The President — No, the Secretary will read it.

The Secretary — After the word "state," insert "or between the conflicting claimants."

The President — All in favor of the motion will say Aye, contrary No. The motion is agreed to. The motion is to recommit with instructions to amend, to be reprinted, and retain its place on the order of third reading, the time for debate having expired.

Mr. J. L. O'Brian — That matter being disposed of, Mr. President, I desire to offer a report of the Committee on Rules.

The President — The Secretary will read the report.

The Secretary — The Committee on Rules recommends the adoption of the following special rule: Resolved, that the following matters be made special orders for consideration when the Convention goes into the Committee of the Whole: General Order No. 65, county government; No. 51, legislative powers; that debate on each special order be limited to one hour, and that the speeches of individual members be limited to ten minutes each.

Mr. J. L. O'Brian — I move the adoption of the report, Mr. President.

The President — All in favor will say Aye, contrary No. The resolution is agreed to. The hour of half-past five having arrived, under the order of the Convention, the Convention stands in recess until half-past eight this evening. Whereupon, at 6:45 p. m., the Convention took a recess until 8:30 p. m. the same day.

AFTER RECESS — 8:30 P. M.

Mr. Wickersham — I suggest the absence of a quorum and ask that the roll be called.

The President — The Secretary will call the roll.

Upon the call of the roll the following delegates responded: Messrs. Adams, Ahearn, Aiken, Allen, F. C., Austin, Bannister, Barnes, Barrett, Baumes, Bayes, Beach, Bell, Berri, Betts, Blauvelt, Bockes, Brenner, Bunce, Buxbaum, Clearwater, Clinton, Cobb, Coles, Cullinan, Curran, Dahm, Daly, Dennis, Deyo, Dick, Donnelly, Donovan, Doughty, Dow, Dunmore, Eggleston, Eppig, Fancher, Fobes, Fogarty, Franchot, Frank, Green, Greff, Griffin, Haffen, Hale, Harawitz, Heaton, Johnson, Jones, Kirby, Landreth, Latson, Law, Leggett, Lennox, Lincoln, Linde, Lindsay, Low, Mandeville, Mann, Martin, F., Martin, L. M., Marshall, Mathewson, Mealy, Mereness, Nixon, Nye, O'Brian, J. L., O'Brien, M. J., O'Connor, Ostrander, Parmenter, Parsons, Pelletreau, Phillips, S. K., Potter, Quigg, Reeves, Rhees, Richards, Rosch, Ryan, Ryder, Sanders, Sargent, Saxe, M., Schoonhut, Schurman, Sears, Sharpe, Sheehan, Shipman, Smith, E. N., Stanchfield, Standart, Steinbrink, Stowell, Tuck, Van Ness, Wadsworth, Wafer, Ward, Webber, C. A., Weed, Westwood, Whipple, White, C. J., Wickersham, Wiggins, Williams, Winslow, Wood, Young, C. H., Young, F. L., President.

Mr. Clearwater — Mr. President, peradventure this record rise up against me at the day of judgment, I would like to say that I did not hear my name called. Also, Mr. Jesse Phillips wishes me to say that he will be detained by official business.

The President — One hundred and ten members of the Convention are present. A quorum is present. Mr. Fogarty will be recorded. The Secretary will read the title of the next order upon the calendar.

The Secretary — No. 827, by Mr. Steinbrink, to amend section 11 of article VIII of the Constitution, in relation to the duties and powers of the State Commissioner in Lunacy. The amendment is now open for debate under the rules.

The President — If there is no debate, the Secretary will call the roll.

Those who voted in the affirmative were: Messrs. Adams, Ahearn, Aiken, Allen, F. C., Austin, Bannister, Barrett, Baumes, Bayes, Beach, Bell, Berri, Betts, Blauvelt, Bockes, Brenner, Bunce, Buxbaum, Clearwater, Clinton, Coles, Cullinan, Curran, Dahm, Daly, Dennis, Deyo, Dick, Doughty, Dow, Dunmore, Eggleston, Eppig, Fancher, Fobes, Fogarty, Franchot, Frank, Green, Haffen, Hale, Harawitz, Heaton, Johnson, Jones, Kirby, Landreth, Latson, Lennox, Lincoln, Linde, Low, Mandeville, Mann, Martin, L. M., Mereness, Nixon, Nye, O'Brian, J. L., O'Brien, M. J., O'Connor, Parker, Parmenter, Parsons, Pelletreau, Phillips, S. K., Potter, Quigg, Reeves, Rhees, Richards, Rosch, Ryan, Ryder, Sanders, Sargent, Schoonhut, Schurman, Sears, Sharpe, Shipman, Smith, E. N., Stanchfield, Standart, Steinbrink, Stowell, Tuck, Unger, Van Ness, Wadsworth, Wafer, Ward, Waterman, Webber, C. A., Weed, Westwood, Whipple, White, C. J., Wickersham, Wiggins, Williams, Winslow, Wood, Young, C. H., Young, F. L., President — 107.

Those who voted in the negative were: Messrs. Barnes, Donnelly, Dooling, Leggett, Martin, F., Mealy, Ostrander — 7.

The Secretary — Ayes, 107; Noes, 7.

The President — The Proposed Amendment having received the affirmative vote of a majority of the members elected to the Convention, it is declared adopted. The Clerk will read the next amendment.

The Secretary — No. 830, by the Committee on Cities. To amend article XII of the Constitution generally, in relation to cities and villages and their powers of self-government.

The President — The amendment is open for debate under the rule.

Mr. Tuck — I desire to suggest an amendment on page 6, line 22; after word "to" insert the word "boundaries." This, Mr. President, is done for the purpose of making it certain that the powers of changing the boundaries of a city, that is, by annexation or otherwise, will be a special city law, within the meaning of the section.

The Secretary — By Mr. Tuck, on page 6, line 22, after the word "to" insert the word "boundaries."

The President — Mr. Tuck moves to recommit the bill with instructions to amend by inserting the word "boundaries" after the word "to" in line 22, page 6, and to report forthwith.

Mr. Low — Mr. President, I am inclined to accept that.

The President — All in favor of the motion will say Aye, contrary No. Motion agreed to.

Mr. Franchot — I offer the following amendments. I make the usual motion to recommit and to report forthwith.

The President — The Clerk will read the amendment.

The Secretary — By Mr. Franchot. Page 3, line 16, after the word "may" insert "adopt and revise a charter or". Page 4, line 23, after the word "charter" insert "after one revision thereof". Page 7, line 6, enclose the word "such" in brackets and insert after such brackets in italics the word "each". After the word "city" insert in italics the words "to which it relates".

Mr. Low — Mr. President, I am willing to accept all of those amendments.

The President — Perhaps it would be better if we should take a vote on the amendments that have been accepted by Mr. Low. All in favor of recommitting with instructions to amend as read by the Secretary will say Aye, contrary No. The motion is agreed to.

The President — There is still another amendment proposed by Mr. Franchot.

The Secretary — Page 6, line 24, after the word "and" and before the word "the" insert the words "in relation to".

Mr. Franchot — Mr. President, that amendment is offered solely for the purpose of improving the language of the amendment and incidentally to clear up any uncertainty that might exist as to whether the words "the government of cities in matters of state concern", etc., are governed by the word "involving" or the words "in relation to".

Mr. Low — I accept the amendment, Mr. President.

The President — All in favor will say Aye, contrary No. It is agreed to.

The Secretary — On page 6, line 25, after the word "and", insert the word "not". Strike out the word "less" and insert in place thereof the word "all".

Mr. Franchot — Mr. President, that is suggested for much the same reason. Manifestly, if the law does not apply to all cities of the State, a classification or distinction is made, between cities of the State. It does not apply to "less" without classification or distinction, because the very fact that it applies to "less" means the classification and distinction in the State.

Mr. Wickersham — May the Secretary read the last amendment?

The President — The Secretary will again read the amendment.

Mr. Franchot — There is an error in the proposed amendment. It should be to strike out the words "less than" so that the line will read "and not applying to all the cities of the State without

classification or distinction". There is no insertion of the word "all" that should be stricken out.

Mr. Low — I think we prefer to stand on the language of the bill, Mr. President.

Mr. Franchot — Well, Mr. President, if a law applies to less than all the cities of the State, it must necessarily contain within a classification or distinction between the cities. The use of the words "without classification or distinction" after the language here employed, is a very different thing from its use in section 3 on page 2, line 24.

The President — All those in favor of the motion say Aye, contrary No. The motion is lost.

Mr. Steinbrink — Mr. President, I offer this amendment.

The Secretary — By Mr. Steinbrink. Page 3, line 6, after the word "police" insert "subject to court review".

Mr. Steinbrink — Mr. President, I offer this amendment, and then I shall briefly explain both.

The President — The Secretary will read the amendment.

The Secretary — Page 3, line 6, after the word "police" insert "subject to cities of the first class to court review".

Mr. Steinbrink — I have offered both, Mr. President, with this in mind. When this matter was discussed by the Committee of the Whole the suggestion was made to me after the discussion, that, while this amendment might be very appropriate in cities of the first class, there might be cities in the State where this was not desirable. Now, if that is so, then the second amendment would certainly meet with no objection. The first amendment that I have offered leaves it free to this Convention to grant to police in all cities, if removed, court review, and if that is not desired in all cities of the State, then the second amendment, which limits court review in cities of the first class, should certainly prevail. Now in the city of New York to-day there are eleven thousand, I am informed, eleven thousand men on the uniformed force. Repeatedly efforts have been made to place in the hands of one man the power to remove these men without court review. Now, that attempt will be made again and again and again until it is successful and it is for that reason that I believe it to be desirable to write into this Constitution, into this section with reference to cities, wherein we have the grant of power, the so-called home rule provision, to write into it once for all the constitutional provision that these men cannot be stripped of their places without the right to court review, and I ask you, gentlemen, that if you do not want this throughout the State, through all the cities, then at least it should be granted in the city of New York where we have had from time to time difficul-

ties, and the power should not be left in any one man to make a political body of the police force by putting it in his power to strip them of their places for the most trivial infractions of the rules. And it won't do for us to say that these things do not occur, because in the past 48 hours I have had occasion to examine some of the decisions and Judge Scott of the Appellate Division in a strong dissenting opinion says, " but even a delinquent policeman has some rights which may not be arbitrarily and unreasonably denied him " and in this case there was a reversal of the police commissioner's findings. And Justice Clark says in one of his opinions " but it is as important to the discipline and morals of the force to protect an officer against dismissal on frivolous charges, to see that he has fair play and just treatment, as it is to sustain the department when he is shown to be really guilty of insubordination, dereliction of duty, infraction of rules or other conduct in violation of good order and discipline." And the courts in the first and second departments have never hesitated to sustain the police commissioner when there has been real evidence of wrongdoing, but on the other hand they have been compelled time and time again to reverse the findings of the police commissioner who attempted to strip a man of his place for the most trivial infraction of rules, and it is as against this that I have offered this amendment.

Mr. Winslow — Mr. President, I desire to move an amendment to Mr. Steinbrink's amendment so that it shall read " cities of the first and second class ". The arguments made by Mr. Steinbrink are good in relation to cities of the first class and they are equally as good arguments for cities of the second class, and concerning New York, I certainly believe that the police of the larger cities should be protected from illegal interference. In all of the cities of the first and second class are pension systems and the policemen pay a portion of their earnings into this pension fund and there are many occasions on the records of the courts where efforts have been made to remove policemen for purely political reasons, and as Mr. Steinbrink has well said, the courts are always ready to sustain the commissioners, when police officers have been removed for sufficient cause. I believe it is only just that policemen of cities of the second class, as well as of the first class should be protected from political interference. I therefore move the amendment as offered and that the amendment be referred to the Committee of the Whole, with instructions to report forthwith as amended.

The President — Will the gentleman send his amendment to the desk?

Mr. Wiggins — Mr. President, the argument advanced by Mr.

Steinbrink seems to me to be very sound. Under ordinary circumstances one would rightly say that this was a legislative matter; but in order that the Convention may understand it, it is necessary to read this provision of the Constitution by which we see that we give to municipalities the right to regulate, among other things, the terms and even the compensation and method of removal of all city employees. Now, when you write into the Constitution the words "method of removal" of employees that takes it entirely away from the Legislature and the city is then vested with entire control over the employees of the city. They may do this, they may pass some amendment to the city charter which would be very harsh indeed. As Mr. Steinbrink said, they can turn a man from the police force for slight infractions of the rules and I can conceive it entirely possible that a man might attempt to turn over the entire police force of a large city for his own political uses. It seems to me to be an outrage that we should in this constitutional article give to the cities the very right which they attempted to get last year in New York and which the Legislature denied to them. Mayor Mitchel came up here and wanted to take away from the Legislature the right to regulate this in any manner and asked that they should give it up entirely. He wanted to become the czar of the police department, and the men here said no, these men have some vested rights which should be protected and preserved. They have been contributing to this pension fund and they have done so justly and in good faith, with the thought when they had discharged their duty that they would be beneficiaries under it, and now for some slight infraction, it may be provided that the police commissioner may bring them up on charges, cut them off without any benefit at all. It seems to me that the men in these large cities ought to be protected. Those are the things that this Constitution is drafted for, to protect the minority from the majority, and if that is to be done, it ought to be done in the city, and these men should have the Constitution place them in a position where they would not be subject to this arbitrary removal by the Mayor.

Mr. Barnes — I have no particular desire to get into the discussion of this subject, but by the argument made by Mr. Wiggins in regard to the protection of the minority from the majority, a great principle, affecting the life of each person as a person, has now been converted by him into an argument for the protection of a policeman. I must confess that I cannot follow any such reasoning. I must confess to a sense of regret that this Convention has adopted so much legislation which should have been left to the Legislature, and has failed to take some of the responsibilities which it seemed to me should belong to it and taken away from

the Legislature. But the proposal made by Mr. Steinbrink seems to me to be so utterly vicious, and absolutely unwarranted by our own scheme and theme of government, as I understand it, involving again the proposal that the bestowal of a power involves its abuse — that doctrine I cannot understand and I don't know what it means. The Legislature can, of course, maintain the present status if it desires. The people of the State through their Legislature can take it away, but to attempt to write in the basic law of the State, the principle which Mr. Steinbrink advances here, seems to me to be perfectly absurd, and as I said before vicious.

Mr. A. E. Smith — The remark of the distinguished gentleman from Albany who has just taken his seat indicates what an entire lack of understanding there is of this question of proper protection to policemen. This is not a new question in this chamber. It is not being debated to-night for the first time. It goes back to the very first charter given to New York, and to every attempted revision of that charter from the days of the Hughes Commission down to the session of 1914. This question has been discussed in this very room and the Senate. Now, we must be able —

Mr. Barnes — That is where it ought to be discussed.

Mr. Smith — Well, we must be able to differentiate between the employee of a municipality and that agent of the municipality which is performing a State function. The function of the police in the city is not altogether a municipal duty. It is a State function, and the municipality is acting simply as the agent of the State, and it has been accepted and adopted as a matter of clear State policy that we are to give protection to the men that do that kind of work from removal by superiors. I cannot make this too strong. It was for the purpose of taking them out of politics that we guaranteed them this right to their place while they performed their duty. This court review was for the express purpose of taking them away from the influence of local politics. Let us get down to the situation clear and plain. If a policeman should arrest a saloon keeper for violation of the excise law, and in a couple of months that saloon keeper would have it in his power to call at headquarters and have him jacked up and dragged in before the commissioner for a slight infraction of the rules and regulations of the police force, you cannot expect discipline, you cannot expect an exercise of the police power unless the law itself, unless this Constitution, if you please, so long as you are writing something in there that interferes with it, protects them in that right to a court review when they perform their duty, their full

duty. That is the question, and you are by this seeking to extend to the municipal authorities a power which they should not have, the right of absolute removal, and if there is any question at all about it, it is a great deal better that we preserve it, even if we have to write it into the Constitution.

Mr. Parsons — The police should have the right of court review, but it should not be in the Constitution. Let me call Mr. Steinbrink's attention also to this point, that as he has phrased his amendment, it includes not only removals, but all other things in regard to the police, compensation, method of selection, and let me also suggest this, that if you put it in here, if a policeman does something which he should not do, for which he should be removed, if his removal is subject to court review, you cannot get rid of him out of the force until the court says so, whereas, if he goes out now he can come back and get his salary.

Mr. Steinbrink — Is it not a fact now, Mr. Parsons, that every removal can be tested by certiorari?

Mr. Parsons — Exactly, tested by certiorari, but this says that the method of removal is subject to court review, that is, you have got to get the approval of the court first. But, apart from that, these are merely technical suggestions that I am making. In my opinion, the police of the cities are absolutely safe. They are safer under the home rule provisions then they are if the Legislature has the power. I know that it is suggested that administrations have sought to take away this power, but home rule is going to work very differently from the way in which certain people think it is and the power of the police is such that, where they have the right of court review, as they have now in the charter, there is practically no chance of its being taken away. That being so, they running no real risk, is it not going to be too much like the Oklahoma method to put it in here?

Mr. Wiggins — You say that the policemen ought to have protection, but unless this is put in, how can they have protection unless they go to the city and demand that protection from the city itself?

Mr. Parsons — They have it in the charter now and they will keep it, because no one will dare to take it away from them.

Mr. Wiggins — They have it in the charter, but don't you know that under the home rule provision the city may amend its charter in that respect if it so desired?

Mr. Parsons — Yes, but it will not dare to do it.

Mr. Wiggins — I had rather have it inserted here than leave it to them to decide.

The President — The Chair recognizes Mr. Low of New York.

Mr. Low — Mr. President, I would like to call the attention of

the Convention that this is not a debate upon the merits of the court review, but this is a home rule bill, and I submit that, whatever else may be said in favor of putting it in the Constitution, it is a violation of the very spirit and idea of home rule. This law protects the policeman in the right which he now has, in two ways. So far as the city of New York is concerned, no change could be made without the consent of the Board of Aldermen, the Mayor and the Board of Estimate and Apportionment. My impression concurs with that of Mr. Parsons, that the Board of Aldermen will be quite as responsive to the wishes of the police in that regard as the Legislature has ever been. But, Mr. President, this home rule bill does not take the matter out of the reach of the Legislature. By a general law the Legislature can apply that policy to all the cities of the State, and all must conform to it. I submit, if it is a sound policy for New York, it is a sound policy for all the cities. There is no difference in principle involved, so that what we are asked to do in a home rule bill is to deny to the locality the control of that authority given, in the first place; and, in the next place, to deny the Legislature the authority to act. It has always acted to this purport, and we are asked to put into the Constitution a provision that will change, I thing, as Mr. Parsons pointed out, the whole administration of discipline in the police force. If a police officer is removed and, by the writ of certiorari, has appealed to the court, if we should change it as Mr. Steinbrink has suggested, I doubt whether a police officer could be removed without getting the consent of the court.

Mr. Winslow — I desire to withdraw my proposed amendment to Mr. Steinbrink's amendment and offer as a substitute the following. It seems to me that the language to which this applies, or the context, makes it more intelligible and I have added to the word "policemen" the word "firemen."

The Secretary — By Mr. Winslow. Page 3, line 12, strike out the period, substitute a comma and add the words "provided that in cities of the first and second class the removal of policemen and fireman shall be subject to court review".

Mr. Winslow — Mr. President, the amendment that I have there, I think, as I have stated, makes the language more intelligible, certainly. The policemen and the firemen — and I can speak perhaps more intelligently concerning cities of the second class — are in very much the same position. If I remember correctly, the uniform charter for cities of the second class which was enacted by the Legislature some years ago — if not adopted *in toto,* it has at least been the skeleton for cities of the second class to form their charters under — made no provision for court

review by either policemen or firemen. Some years ago it was a subject of vital discussion in the State as to whether or not the authorities of cities of the second class, not vested with absolute power of discretion, ought to remove both policemen and firemen without court review and a great many cities of the second class believed that discretion should be left in the commissioner and that greater efficiency would be obtained by giving this discretion to the commissioner. However, the cities of the second class, uniformly throughout the State in one form or another, have provided for a review on the part of commissioners in the removal of either policemen or firemen. Now there can be no question that this home rule amendment now pending before the Convention, if adopted, will vest in cities of the first and second class the power to amend their charters in this respect, and there may be taken away that power, that right which now exists on behalf of the policemen and firemen to have their cases reviewed by the courts in the event of removal. There is that power vested in the cities if this home rule amendment becomes a part of the fundamental law, the power to take away that right of review, I believe that the right of these public servants to a proper review by judicial tribunals should be preserved in the Constitution if the power to take away that review shall be put in the home rule measure.

Mr. J. L. O'Brian — Mr. President, this is the same question which we had up in the Committee of the Whole and to which that committee, after full consideration and debate, made a negative answer. I wonder if these gentlemen fully realize what they are asking us to do. They are asking us to place in the fundamental law, the organic law of the State of New York, a permanent, unchangeable privilege for one particular class of minicipal employees. They would have you believe that this home rule measure for cities is an attack upon some sacred and inviolable right of one particular class of employees. Now, gentlemen, the fact that the second class cities, if it is a fact, have provided a court review for their police removals, is the best evidence that you can ask that this power to appoint and remove officials will not be abused by cities. What will be the effect of this home rule provision? To begin with, if the Legislature believes that these particular employees are peculiarly State functionaries, it can pass a general law which will apply to every city in the State. If, on the other hand, somebody in the city of New York should seek to have stricken from the charter the present provision, then it would be necessary to have the board of aldermen, the board of estimate and the mayor all concur before such an ordinance could take effect, and then the police officer

would have the right to a writ of certiorari to review that. Now, under the proposition of Mr. Steinbrink, see, on the other hand, what you are doing with the city. If you put in this Constitution a provision for a court review in that bald term, without any refinement or distinction, you are giving every officer a right to review by the courts both on the facts and on the law, and substituting the courts of the State for the discretion of the municipality as to their removal in that service. And the gentleman from Westchester asks you to put the firemen in, not into a statute, not into an ordinance, but into the fundamental law of the State, with a provision that the fireman is a sacred person who should have rights different from other individuals. If you do that, why not the school teachers — exactly as much the school teachers should be placed in the Constitution of the State.

Mr. Quigg — Isn't the fact that firemen and policemen expose their lives constantly in the discharge of their duty the reason why this court review is given in their case, instead of the school teachers?

Mr. J. L. O'Brian — The question of justice, Mr. Quigg, is the same in every removal, whether it be a policeman or school teacher, or the fifth clerk in an office, in my opinion, and I would like to correct a misapprehension on the part of the young men of New York. They ask, "If you don't agree to place this in the Constitution for all cities, then you put it in for cities of the first class," under that same misapprehension that there is only one city of the first class. There are two, Mr. Steinbrink agrees. Mr. Steinbrink, there are three, and have been for many years; and the other two, if my opinion is worth anything, do not care for this in the Constitution. Both Rochester and Buffalo, I am sure, are perfectly willing to trust to the citizenship of those cities to manage their own affairs and do justice to everybody and I earnestly hope this Convention will not embody so strange and anomalous a proposition in the fundamental law as that any one set of individuals shall have a right which is denied to all others.

Mr. Doughty — I offer a substitute for Mr. Winslow's proposed amendment.

Mr. Newburger — Mr. President, if the gentlemen from up the State whom I have heard address this Convention in the last few minutes had the remotest notion of the conditions which obtain in the city of New York, I doubt very much whether they would call it an "anomalous condition" — a distemper on the part of Mr. Steinbrink to offer this amendment. I sincerely hope this amendment will prevail. I have had some experiences as a deputy police commissioner in the city of New York, and so I

hope, I pray, that the members of this Convention will do everything in their power to protect a body of ten or eleven thousand men in the city of New York who can and might be, if this section in this provision goes through as it is, at the absolute mercy of a group of men, or I might say at the mercy of a group of politicians in the city of New York. When the last administration came into power in the city of New York, it followed a period of certain upheavals in the police department of the city of New York, and either rightly or wrongly, and wrongly I believe, an effort was made on the part of that administration to secure certain legislation here in Albany so that the police could be put absolutely under the thumb and in the power of the administration of the city of New York. Now, that is wrong, Mr. President and gentlemen of this Convention. It is wrong for this reason: that if there is a wrong policeman in the city of New York, and the police commissioner of the city of New York, and the mayor of the city of New York want to get that man, it is within their power to get him, and it is proper that that man should have his right to court review. It is improper that any man occupying the position of a policeman, the defender of the public welfare of the city of New York should be placed in the position where he is dependent upon the condition of a mayor or a police commissioner's dyspepsia from day to day. Now, I know whereof I speak. It is not so very many months ago that a police commissioner of the city of New York saw fit to fine a man, a policeman, and that policeman had the temerity to appeal from the decision of the police commissioner. The result was that the courts remitted that fine; and the police commissioner, being angered at the man's temerity, turned around and succeeded in finding other faults or other wrongs of a neglect of duty committed by the man, and he had charges preferred against him and had him discharged from the force. Fortunately, again, the court was there to bring him back. But there is not a man here who has lived in the city of New York who does not know the condition obtaining there, who does not know what a prominent part the police play in the city of New York, how dependent the administrations of the city of New York are on the conduct of a police force, who has any realization of what it means to take from these men that power of court review. It is not fair. It is not right. Any man who secures the enmity of the man, of the police commissioner, his position is not safe.

The President — The gentleman's time has expired.

Mr. Stimson — Mr. President, I can conceive of no more preposterous proposition, as it seems to me, than to place in the Constitution, in the fundamental law of this State, a provision breathing into that law for twenty years a particular kind of

method of review, of cases of discipline in the police force. The Constitution which by the platform of the Republican party is to be a charter of the fundamental principles of government, is to be adapted, turned into a special regulation of a special method of review in cases of discipline in a particular class of the public servants of our cities. There has been a good deal said here about the protection of the police force. I think it is time we turned a little of our attention to the protection of the citizen. After all, that is what the police force exists for, the protection of the city. And we have had within the past few years lessons in public history in the city of New York which indicate that we have not learned the last lesson in establishing a disciplined police force. And there is a fairly well-established body of public opinion that has thought that possibly the method of court review had something to do with that. Now, they may be wrong. They may be right. But it is not yet a matter, as it seems to me, for a constitutional enactment. As has been well pointed out, the present situation leaves it within the power of the Legislature to overrule on matters of State concerns like a police force, in the enactment of the system which the city may establish. Certainly the present system is sufficiently well protected, but to go further, and to place in the fundamental law of the land a system under which there has been within the last few years revealed a situation of lack of discipline, such as was shown to have existed in the police force under the prosecutions of the present Governor of this State a few years ago is perpetuating what seems to me, to say the least, a situation which is not thoroughly established as the best system in the world.

Mr. Latson — Mr. President, I should like to add just a word to the discussion of this subject. I should like to remind this Convention that we are drafting a Constitution and not a code of civil procedure. I don't recognize any place in our Constitution for rules of procedure. But I think the suggestion that such a provision should be inserted in our Constitution is no more reasonable than that any other provision with reference to mere procedure should find its place there. I think, further, that we are proceeding upon a somewhat wrong theory as we approach this question. I am not so sure that it is our duty in framing the Constitution to deal with the factors that go to make up the contract between employer and employee. If that be so, why not extend the doctrine right on down through, covering every employee of every city in the State? Why not let it cover the school teachers? Why not let it cover the department of street cleaners? Why not the employees on the municipal ferry running down to Staten Island? Why not let it cover everyone who has

the relation of employee to the city as his employer? If we cannot trust the courts, if we cannot trust the Legislature, if we cannot trust the city, why not then write into this Constitution the terms of employment that shall govern the relations of employer or employee and between the city and its employees, down through every avenue of those relations? To my mind it is illogical and I am not convinced that there is any danger in leaving this matter to the sound discretion of the legislative authorities. I have seen some of the ways this court review works, it has passed before my eyes, I have seen it, I have seen the policeman, discharged under conditions that he knew would not stand a test in a court of law. I have seen him wander his weary way through the courts, not disposed to hurry at all, and eventually be reinstated, to receive his back pay, and the next day to be placed on the retired list. I have seen all that. There is something more than mere sentiment in this proposition. Let us deal with it as a business question. We sitting here making a Constitution have no right to deal with these questions. They are not the problems that are presented to us. Those are the problems between employer and employee and perhaps the time may come when these cities or some of them will find it very desirable to have a disciplinary court to deal with their policemen, firemen and other employees. It might be very desirable that they have just that power in an emergency which you and I may not now foresee. But one thing is recognized, gentlemen, that in the city of New York there has never been a time, so far as I know, not since the days of the old metropolitan police force when there was not the right of court review over policemen who were discharged. If I am mistaken in that I desire to be corrected. There may be those within this chamber better informed than I am, but it is my recollection that there never was a time in the city of New York when the police force was not entitled by statute to a court review, and if that be so why should we contemplate the possibility that in the future they will be denied their day in court whenever they are entitled to it? I hope we shall confine ourselves to drafting a Constitution, and not place in it matters that belong in a court of law.

Mr. Wickersham — Mr. President, it seems to me the proposed amendment would in effect substitute the discretion of the court for the discretion reposed in the city officers. The proposed amendment makes the power conferred by the clause of the proposed constitutional amendment to organize and manage the departments, including the fixing of powers, duties, qualifications, mode of selection, compensation and method of removal of all city officers and employees subject to the general and unqualified provision that it shall be in cities of the first and second class

subject to court review. Now, Mr. President, if that language is used in that broad, unlimited way, you might just as well abolish your police commissioner, your fire commissioner, and pass the thing up in the first instance to the Appellate Division. Under the existing provisions of law if a policeman or fireman is tried on charges and removed he takes a writ of certiorari to review the regularity of the proceeding, and the court considers first whether the charges upon which he was tried present a *prima facie* case; and, second, whether he was convicted on legal evidence. But under this proposal there would be nothing to restrict the plenary powers of the court to review the entire proceeding, and exercise the discretion which by this clause, aside from the amendment, has been conferred upon the city official. Now, I do not suppose that that was what was intended by the mover of the amendment, but it is the effect of the proposal.

I take it, Mr. President, that nobody in framing this amendment intended to deprive a policeman or any other city employee of the right to challenge the legality of any proceeding by which he was removed from his office or by which any other legal right was infringed. It was not intended in the slightest degree to interfere with the existing right and power to deal with the subject in broad terms as here in the cities, an extension of that home rule we have all been clamoring for, but if in the exercise of a power, predicated on evidence which is not legal, not competent, a man has been removed from his position, the courts are still open to him by the exercise of the ordinary jurisdiction through the ordinary writs to challenge review, and possibly to upset the action of the court. But we certainly ought not here to substitute for the duly constituted authorities of the city the unlimited discretion of any court.

Mr. Brackett — Mr. President, I suppose, living up in the northern part of the State, I can view such a proposition as this, as impartially as anyone anywhere. To be absolutely frank about it, I expect to throw myself in the way of the steam-roller, and to speak with no idea of changing the result that I foresee. But I do want to say that it still stands true that no human being ought to have absolute and unreviewable power over any other human being. I can imagine a man whose ferocity of instinct has been whetted by being a district attorney, and who has further whetted that ferocity by being secretary of war; or how a man who has grown up with military instincts and in the militia should believe that a man on the force should be subject to absolute removal with no review, but in time of peace, certainly outside of the regular army, such a thing ought to be unthinkable. If the power of review is denied here, thinking it should be left to the Legislature, and then it is denied there, it will be a sorry result not to put

it in the Constitution. When my honored leader says that this amendment would substitute the discretion of the court for that of the official trying of an officer, in the name of justice what is a court for except to have its discretion substituted for that of some person where there is a difference between that person and someone else? The excuse for the existence of the court is that it will exercise its judgment and discretion where two persons differ; it is a legalized referee or umpire. I don't care whether an officer has been removed as the result of a bad breakfast or bad temper, or as a result of calm, judicial action, a reasonable person ought to be willing to have a review, and unless his judgment is sustained by the facts as they are proven, he ought to be willing to be reversed, indeed he ought to welcome such a result. It is not best for anybody to get it into his head that he is the whole thing. The very best of us sometimes make mistakes, and when a mistake thus made will blacken a policeman's whole future, the man that makes the mistake ought to be willing to have a review of his action. For one, I want to vote for this amendment. I believe a permission for review, an opportunity for review in criminal and quasi-criminal cases is a test of the civilization of the community; that the community that does not give such a review, that does not give an opportunity to reverse an unjust conviction shows its lack of civilization. I would rather go and live in a Hottentot kraal village for the rest of my days and trust to the administration of justice there, than where no review at all is permitted. I favor the amendment.

Mr. Weed — I hope that these amendments which have been suggested will not pass. It seems to me that they are an attack upon the entire theory of this bill which is before this Convention. They seem to be inspired by a fear of home rule. They seem to think that if home rule is given to the cities, that they are going to run riot with regard to the protections of their public servants which have been granted to them always in the past, and I cannot imagine that there would be any greater safety to the position of a policeman than the safety and security of those positions which is given to them by the courts and by the officers of the cities in which they exercise their power. It is inconceivable, Mr. President, that there would be any effort on the part of a city to deprive policemen of the protections that they have always had. They have not been protected in their positions in the past by any provision in the Constitution, and is there any well-founded reason to believe that the cities in the care of their own interests, in the care of their property, in the care of their persons, that these cities are going to pass any amendments that will in anywise impair the efficiency of their police force, or impair the right to just and proper treatment which policemen have had and will

have, and I hope, therefore, if this bill is passed, it will be passed without these amendments.

The President — The time for debate has expired.

Mr. Steinbrink — Mr. President, may I withdraw the amendment offered by me, since the amendment offered by Mr. Doughty meets the criticism offered by Mr. Wickersham, and the amendment offered by Mr. Doughty is entirely acceptable to me.

Mr. A. E. Smith — Mr. President, I was recognized quite some time ago but this proposition has got in ahead of me. I offer the following amendment.

Mr. Wickersham — Mr. President, I have sent up an amendment to the Secretary.

The President — The Secretary will read the amendment offered by Mr. Doughty. The Chair asks whether these amendments all relate to this same subject?

Mr. A. E. Smith — No, Mr. President, mine is amending an entirely different section.

Mr. Wickersham — Mr. President, mine relates to this subject.

Mr. Doughty — Mine relates to the court review.

The President — Mr. Steinbrink withdraws his proposal?

The President — Does Mr. Winslow withdraw his amendment?

Mr. Winslow — I will, if it is covered by Mr. Doughty's amendment.

The President — Mr. Doughty's amendment will be read.

The Secretary — By Mr. Doughty. Page 3, line 12, after the word "record" add "provided that provision for the removal of police officers in cities of the first and second class shall not prohibit a court review of such removal proceedings".

Mr. Winslow — Mr. President, I will withdraw my amendment. I think Mr. Doughty's is a great improvement.

The President — Mr. Wickersham's amendment will be read.

The Secretary — Page 3, at the end of line 12, insert "provided, however, that nothing herein contained shall be construed to impair the right of any police officer or fireman of the State to review by appropriate legal proceedings the legality of any removal".

The President — That appears to be a substitute for Mr. Doughty's amendment.

Mr. Donnelly — Mr. President, I sent an amendment on the same subject. I ask that it be read.

The President — The Secretary will read Mr. Donnelly's amendment.

The Secretary — By Mr. Donnelly. Page 3, line 12, after the word "record" strike out the period and add, "provided that in cities of the first and second class the removal of policemen or firemen shall be subject to review by writ of certiorari".

Mr. Wickersham — Mr. President, may I point out that the new proposed civil practice act rules abolish writs of certiorari, so that a provision in the Constitution referring to a writ of certiorari might become obsolete if these rules be adopted.

Mr. D. Nicoll — Mr. President, may I ask Mr. Wickersham a question?

The President — By unanimous consent.

Mr. D. Nicoll — Does your amendment include firemen?

Mr. Wickersham — Yes.

Mr. Low — Mr. President, I would like to have it understood that the Committee is not willing to accept any one of these amendments.

The President — The question first arises upon the substitute offered by Mr. Donnelly. All in favor of the motion to recommit with instructions to amend in accordance with that substitute will say Aye, contrary, No. The amendment is lost. The question next arises upon the substitute offered by Mr. Wickersham. All in favor of amending in accordance with that substitute will say Aye, contrary, No. The amendment is lost. The question now arises upon the motion by Mr. Doughty to amend as read by the Clerk.

All in favor of that motion will rise and remain standing until counted. The gentlemen will be seated. All opposed will rise. The gentlemen will be seated. Ayes 45; Noes 66. The amendment is lost.

The President — The amendment offered by Mr. A. E. Smith will be read.

Mr. A. E. Smith — May I have a minute to explain that?

The President — The Chair is not at liberty to permit that.

Mr. A. E. Smith — I ask unanimous consent to make a one-minute explanation.

The President — May the amendment be read first?

The Secretary — On page 5, between the lines 20 and 21, insert a new paragraph to read: "The legislature may provide that charters and charter amendments shall not be submitted to the legislature for approval unless a protest against such charters or charter amendments is made as provided by law, by the electors or municipal authorities of the city or by the members of the legislature. The legislature may delegate to the electors of a city the power to disapprove the charter amendments herein vested in the legislature."

The President — Unanimous consent is asked for a one-minute explanation by Mr. Smith. Is there objection?

Mr. A. E. Smith — Mr. President, this takes the place of the amendment that I offered to this bill when it was in Committee of the Whole. My original amendment provided that upon petition to the City Clerk of a certain number of electors, a percentage of the electors I believe I fixed it, in protest, it should then come to the Legislature. I provide by this amendment that the Legislature may by law provide that it is unnecessary to submit to the Legislature charter amendments or charters for nullification unless it be requested by the electors, by the city officials in the case of a charter adopted by the people after preparation by a charter revision commission, or by a certain given number of members of the Legislature, leaving the power entirely with the Legislature to prescribe the manner and method.

Mr. Low — Mr. President, I ask unanimous consent to say that the committee cannot accept the amendment.

The President — All in favor of recommitting, amending as indicated by Mr. Smith and reporting forthwith will rise and remain standing until counted. The gentlemen may be seated. Those opposed will rise. The gentlemen may be seated. Manifestly the amendment is lost.

Mr. Dooling — Mr. President, I sent an amendment to the desk and ask that it be read.

The President — The amendment will be read.

The Secretary — On page 5, line 4, strike out all after the word "be"; all of lines 5, 6 and 7 and all line 8, down to and included the word "respectively" and insert instead the following: "twenty-two, one chosen by the electors of each senate district".

Mr. Dooling — May I have one moment by unanimous consent, to explain my amendment?

A Delegate — I object.

Mr. J. G. Saxe — Mr. President, may I ask that the section be read as amended, because the amendment does not mean anything by itself?

The President — The Secretary will read the paragraph as it would be if amended as indicated.

The Secretary — "At the general election in the year one thousand nine hundred and seventeen and unless its charter shall otherwise provide in every eighth year thereafter, every city shall submit to the electors thereof, either at a general or a special election, the question 'shall there be a commission to revise the charter of the city?' and may at the same time choose seven commissioners to revise the city charter in case the question be answered in the affirmative, provided, however, that in the city of New York the number of such commissioners shall be twenty-two, one chosen by the electors of each Senate District".

The President — All in favor of the motion will say Aye, contrary, No. The motion is lost.

The President — That completes the disposition of the amendments. The bill, having been amended, will lie over to be printed.

The Secretary will read the title of the next order.

The Secretary — Number 837, by Mr. Blauvelt, to amend article seven, by adding a new section relating to highways.

The President — The amendment is open for debate.

A Delegate — Question.

The President — If there is no debate the Secretary will call the roll.

Those who voted in the affirmative were: Adams, Ahearn, Aiken, Allen, F. C., Austin, Bannister, Barnes, Barrett, Baumes, Beach, Bell, Bernstein, Berri, Betts, Blauvelt, Bockes, Brackett, Brenner, Burkan, Buxbaum, Clearwater, Coles, Cullinan, Curran, Dahm, Daly, Dennis, Deyo, Dick, Donnelly, Donovan, Dooling, Doughty, Dow, Dunmore, Eggleston, Endres, Eppig, Fancher, Fobes, Fogarty, Franchot, Frank, Green, Greff, Haffen, Hale, Harawitz, Heaton, Hinman, Johnson, Kirby, Kirk, Landreth, Latson, Law, Leary, Lennox, Lincoln, Linde, Lindsay, Low, McKinney, Mandeville, Martin, F., Martin, L. M., Marshall, Mathewson, Meigs, Newburger, Nicoll, C., Nicoll, D., Nye, O'Brien, M. J., O'Connor, Ostrander, Parker, Parmenter, Parsons, Phillips, J. S., Phillips, S. K., Potter, Reeves, Rhees, Richards, Rodenbeck, Ryan, Ryder, Sanders, Sargent, Saxe, J. G., Schoonhut, Schurman, Sears, Sharpe, Shipman, Smith, E. N., Smith, R. B., Stanchfield, Steinbrink, Stimson, Stowell, Van Ness, Wadsworth, Wafer, Ward, Webber, C. A., Weber, R. E., Weed, Westwood, Whipple, Wickersham, Winslow, Wood, Young, C. H., Young, F. L., President.

Those who voted in the negative were: Bayes, Clinton, Ford, Jones, Leggett, Mealy, Mereness, Nixon, Pelletreau, Rosch, Smith, A. E., Standart, Tuck, Unger, White, C. J., Wiggins, Williams.

The President — The vote is 117 in favor, and 17 against. A majority of all the members elected to this Convention having voted in the affirmative on this proposed amendment, it is adopted.

Mr. Rodenbeck — May I interrupt long enough to present the report of the Committee on Revision and Engrossment?

The President — The Clerk will read the report of the Committee on Revision and Engrossment.

The Secretary — Mr. Rodenbeck from the Committee on Revision and Engrossment to which was referred proposed amendment introduced by the Committee on Canals, No. 845, Introductory No. 710; also proposed Constitutional Amendment

introduced by the Committee on Suffrage, No. 844, Introductory No. 711, reports the same as examined and found correct and properly engrossed.

The President — The question is upon agreeing to the report of the Committee. All in favor of reading the report will say Aye, contrary No. The report is agreed to and the amendments will go on the calendar. There is another report.

The Secretary — Mr. Rodenbeck from the Committee on Revision and Engrossment to which was referred proposed Constitutional Amendment introduced by Mr. R. B. Smith, No. 841, Introductory No. 290; also proposed Constitutional Amendment introduced by Mr. R. B. Smith, No. 840, Introductory No. 385, reports the same as properly engrossed.

The President — The question is upon agreeing to the report of the Committee. All in favor will say Aye, contrary No. The report is agreed to.

Mr. Marshall — May I ask unanimous consent to make the following motion, that General Order No. 63, Print No. 816, be recommitted to the Committee on Bill of Rights with instructions forthwith to amend the same by adding after the word "have" in line 23, page 2, the words "or right to", and by striking out from the same line, after the word "one" the words "right of"; by striking from line 11, page 3, the words "official referee"; and by striking from page 3, lines 15 to 19, and substituting therefor the words "where the proceedings are instituted by a civil division of the State compensation shall be paid before such taking unless the Supreme Court after hearing because of public necessity shall otherwise direct," and that the proposed amendment be reprinted as amended.

The President — Is there any objection? The Chair hears none. All in favor of the resolution will say Aye, contrary No. The resolution is agreed to. The Secretary will read the title of the next amendment in order.

The Secretary — No. 829, by the Committee on Cities. To amend Section 10 of Article XIII of the Constitution, by dividing it into two sections to be known respectively as Sections 10 and 11, by amending the second part thereof, and by adding a new section to be known as Section 12.

The President — The amendment is open for debate under the rule.

Mr. Austin — Gentlemen of the Committee, I realize that we are all wearied with debate, but I cannot forego talking about this amendment, because I have devoted some attention to it. You may recollect that last week when it was under consideration in its original form, a number of defects were pointed out in it by me

and by others, and the Committee was instructed to again examine it and Mr. Stimson and Mr. Lincoln and myself with the Committee, retired from the chamber, and we sat until quite late that evening examining it, and we made numerous changes. Simply from knowledge, and not without any examination of the statutes, because at that time we had no time to do it. We started again upon it the next morning, and in the meantime, I myself, and I have no doubt some of the others had made some examination of the law on the subject, and all of us who sat there at that time agreed upon this bill in its present form with one exception. We decided that our examination of the law had been such that it was not safe to apply this proposition to anything but cities, because we had not had time to examine the county, town and village law. After we had adjourned with that understanding, and later the Chairman of the Committee told me that at the request of the Committee on County, Town and Village Government, he had again inserted in the bill the words "counties, towns, villages and other civil divisions of the State", because the Chairman of that Committee had told him that, had they not supposed that the Cities Committee was to take care of that matter, they would have taken care of it. I want — it is needless to call attention to the fact that when you attempt to legislate by constitutional enactment upon the question of municipal bonds, the finances of the community, you are upon a subject which should receive the utmost care and consideration. Now, this amendment, I am satisfied, has not received the care which it should have. I have myself endeavored ever since that meeting to give time to the examination of the statutes, and satisfy myself as to whether we were not leaping in the dark upon this proposition. You know, there are provisions in the education law, the town law, the general municipal law, the second class cities charter, the county law, and various special city charters, about these bond issues. I have examined as many of them as I could, and I have arrived at the conclusion that we may be rushing into difficulty in adopting this amendment. There are so many questions arising in reference to special assessment issues, certificates of indebtedness, and various bonds which I have not had the time to work out and satisfy myself that we are not creating a hardship upon certain municipalities and that we may not be creating difficulties which it will be difficult to overcome. Now, I know of two or three instances where bond issues of municipalities are now being held up by injunction, and one case I know, where the matter is pending in the Court of Appeals, and will not be argued until late this fall. The proceedings have been taken by the municipality. Their legality has been questioned and the community has been enjoined from issuing the

bonds. Now, undoubtedly the decision of the Court of Appeals will not come down until after the first of January in this matter, and in one or two others I know of. What will be the effect of this amendment on those proceedings? Will all that have been taken be nullified by this amendment, if the Court of Appeals should sustain the legality of the proceedings in question? I don't know. I feel it is a dangerous thing to adopt this amendment. However, I am willing to do this, and it seems to me a perfectly fair proposition. This Cities Committee has among its membership many able lawyers. If there is one lawyer on that Committee who will tell me he has examined the statutes and the decisions of the court relating to these bond issues and he is satisfied after that examination that this amendment is right and proper, I will vote for it. But I have inquired of some members of the Committee, and those members of whom I have inquired have told me they had made no such examination. Now, I submit, Mr. President, that it is unwise in the extreme to pass a measure of this importance unless somebody — somebody has thoroughly examined the law and the decisions upon it. In my present frame of mind I cannot vote for it.

Mr. R. B. Smith — I move to recommit with instructions to amend as follows: Two amendments.

The Secretary — By Mr. R. B. Smith, page 6, lines 10 and 11, strike out "State engineer and surveyor", and insert "superintendent of public works of the State". On page 6, lines 23 and 24, strike out the words "Said sinking fund is insufficient to pay the same" and insert in place thereof "The payment of the same shall not have been provided for by a sinking fund."

Mr. R. B. Smith — Mr. President, the first amendment is obviously necessary. The second, the amendment provides for two cases for refunding of outstanding bonds, one where there is no sinking fund as in the case of the water bonds of the City of Syracuse, and the other where there has been a partial sinking fund as in the case of the city of Rochester. Now, line 23, refers to both cases, and limits it in this language: "may, so far as said sinking fund is insufficient to pay the same" apparently referring only to the Rochester case and not the Syracuse case, or similar cases. I have tried to cover it by language which would apply to both cases which exist, of course, in different cities of the State.

Mr. Low — Mr. President, Mr. Austin's statement is correct. At the conference which we held with members of the State Finance Committee and others having special knowledge, as we thought, upon this subject, it was determined to confine the section 12 to cities only. But by Mr. John Lord O'Brian and Mr. Barrett, of the County Committee, I was asked to restore it. I

did restore it to its original form, so that it would include counties, towns, villages and other civil divisions of the State, upon their assurance that they would have introduced a corresponding amendment for those smaller divisions of the State, had they not understood that it was to be included in ours. They can explain the situation as it bears on the smaller communities better than I. This is the process that was pursued by the Cities Committee in preparing this article. We appointed a sub-committee, consisting of Mr. Wiggins, Mr. Sanders, Mr. Weed and myself. We corresponded with the different cities so far as we had any reason from the testimony given before us, to know that they were especially interested; and without having examined all the laws as Mr. Austin has said, I think we did make a very thorough study of the situation in the large. Our movement was based primarily upon letters which we sent to all of the cities of the State, asking many questions as to the debt, the amount of water bonds and other bonds that they had, the number of times the debt was refunded and the like, and it was upon that information, coming from the cities only, I must say, that we took the initial step to prepare this section 12. I have since sent the section, not in this form, but in the earlier form, to all of the cities of the State, and from none have had any criticism that have not been met by the revision made in the Committee of the Whole.

Mr. Parsons — Will Mr. Low let me say that after this was passed by the Committee of the Whole I sent a copy to the Comptroller's office in New York City, and requested a reply in case there was any criticism which the Comptroller's office had to make, and no reply has come.

Mr. Latson — Mr. President, I feel, in view of what Mr. Austin has said, that I should make the statement that the sub-committee referred to by Mr. Low reported to the Committee on Cities and their report was accepted without individual study by myself at all events, and I am in no position to guarantee the accuracy of the work of that committee, and I assume, as Mr. Low has stated, that the work was done with the usual thoroughness of the gentlemen who composed that sub-committee, and I share with Mr. Austin something of this sense of danger in adopting a constitutional provision of this nature under the conditions which he has described.

Mr. Wickersham — Mr. President, the hour of ten-thirty having arrived, I am about to move that we adjourn until to-morrow, and I do it at this juncture because I believe it will give an opportunity for a conference on this measure before it comes up to be voted upon, and I therefore now move that the Convention adjourn until tomorrow morning at 10 o'clock.

The President — Mr. Wickersham moves that the Convention do now adjourn. All in favor say Aye, contrary No. The motion is carried and the Convention now stands adjourned until 10 o'clock tomorrow morning.

Whereupon at 10:30 P. M. the Convention adjourned until Wednesday morning, September 1, 1915, at 10 o'clock.

WEDNESDAY, SEPTEMBER 1, 1915

The President — The Conventon will please be in order. Prayer will be offered by the Rev. William R. Charles.

The Rev. Mr. Charles — In the name of the Father and of the Son and of the Holy Ghost, Amen. Our Father Who art in Heaven, hallowed by Thy name, Thy kingdom come, Thy will be done, on earth as it is in Heaven. Give us this day our daily bread, and forgive us our trespasses as we forgive those who trespass against us, and lead us not into temptation, but deliver us from evil, Amen. In the name of the Father and of the Son and of the Holy Ghost, Amen.

The President —Are there any amendments to be proposed to the Journal as printed and distributed? There being no amendments proposed, the Journal stands approved as printed. Presentation of memorials and petitions. Communications from the governor and other State officers. Notices, motions and resolutions. The Secretary will call the roll of districts.

Mr. Eisner — I desire to give notice that, unless the Rules Committee makes the social welfare program of the Industrial Relations Committee a special order in general orders before the end of this week, I shall move to discharge the Committee of the Whole from further consideration of that measure.

Mr. Marshall — Mr. President, on behalf of the Committee on Bill of Rights, I ask whether there is to be a special order made presently of General Order No. 63, which involves a number of very important propositions to which the Committee has given very serious thought and which it feels should be acted upon by the Convention.

Mr. Reeves — Mr. President, while the matter of the Bill of Rights is up, if it is in order, I would like to offer a minority report on the matter of capital punishment. In offering this, the minority wish to express their entire satisfaction with and cordial appreciation of the way in which they were treated in regard to the matter. It is submitted by five of the members of the Committee on Bill of Rights, Vice-Presidents Scharman and O'Brien, and Mr. Bunce, District Attorney Martin and myself.

If it is not out of order — it is brief — I would like to have it read.

Mr. M. J. O'Brien — Mr. President, in that report of the Committee on Bill of Rights there are some provisions that it seems to me the Convention should pass upon, particularly those relating to questions of commutation and the rights that are involved in matters affecting cities of the State.

Mr. Schurman — In that connection, I should like to ask whether it would not be better to withhold this report until the Convention has before it the Proposed Amendment of the Committee on Bill of Rights of which the chairman has just spoken.

The President — The question before the Convention is, shall Mr. Reeves and his associates in the minority in Committee on Bill of Rights, have leave to file a minority report. All in favor of granting that leave will say Aye, contrary No. The leave is granted.

The Chair suggests that the report will be printed in the ordinary course and, as the matter cannot be considered now, perhaps it would not be worth while to have it read.

Mr. Reeves —All right.

The President — It will be printed and distributed so that the members will all have it for consideration. The Chair will say for the information of the gentlemen who have spoken that the Committee on Rules had under consideration a schedule of special orders at the time of their last meeting which included both the report of the Committee on Bill of Rights and the report of the Committee on Industrial Relations. They were interrupted by coming into the Convention, and, as we have been continuously upon the order of third reading since that time, they have had no opportunity for further consultation. The Chair has already been requested to give notice of a meeting of the Committee on Rules immediately upon the taking of the recess, at noon to-day, and the Chair will give notice now. The Committee on Rules will meet immediately upon taking recess at 1 o'clock, or about then. The call will proceed. Reports of standing committees. Reports of select committees. Third reading. The unfinished business of third reading is the bill reported by the Committee on Cities, Third Reading No. 21, Print No. 829, Int. No. 713, relating to the contracting of debts by cities.

Mr. Stimson — In reference to the bill now on third reading, I have been much impressed with the considerations which were advanced by Mr. Austin last evening, and which indicated the extreme risk and danger of endeavoring to create a constitutional method for the contracting of debts by the various subdivisions of the State without a prolonged and exhaustive study of the

various laws and statutes which now regulate all such debts. So far as we have been able to observe, that condition has not been fulfilled thus far. It would be impossible for it to be fulfilled in the time that any Committee has had during the sessions of this Convention. And I have rather reached the conclusion, myself, that it would be the safer method to follow to suggest that this reform which is certainly needed, be introduced by a directory method rather than by inserting, in a mandatory manner, the provision in the Constitution. I therefore drafted this morning a provision, of which I have sent a copy to the chairman on Cities, which endeavors to follow out that method and simply to prescribe a duty to the Legislature to provide the necessary laws which will carry out a policy thus set out in the Constitution, and I should like to offer that amendment as a substitute for section 12 on page 5 of the pending bill, which merely makes it the duty of the Legislature to provide by law for the issuance of debts in serial form and the limitation of the length of time in which those debts shall mature, to the end that the life of the debt shall not exceed the life of the object for which the debt is created.

Mr. J. L. O'Brian — It seems to me that it would be the part of wisdom to lay this bill aside until it is reached on the Calendar to-morrow morning. This proposed amendment is one that the members of the Committee on County Government have had no opportunity to study. That Committee — I might say with reference to what Mr. Low said last night about the way in which this present bill was drawn, that Committee made up of men from ten or twelve different counties in the State, all of whom were more or less familiar with the method of issuing bonds in school, lighting districts and so forth, felt that the bill before us was proper and was adequate. If they are wrong in that opinion, they naturally want the bill changed, but if we adopt this amendment this morning which is suggested by Mr. Stimson it will put us in a position where when this bill comes up on reprint, there will be no opportunity for discussion on it, and I think it important that we should have an opportunity to consider the bearing of this new amendment, and I therefore move that this bill, this proposed amendment now under consideration shall lie over until to-morrow morning, holding its present place upon the third reading calendar.

Mr. Stimson — May we have — for the purpose of getting it on the Record, may we have my proposed amendment read so that it will be in print?

The President — The Secretary will read the amendment of the Finance Committee proposed by Mr. Stimson.

The Secretary — By Mr. Stimson. Substitute for section 12.

The Legislature shall make provision by law for the method and limitation under which debts may be contracted by the cities, towns, villages and other civil subdivisions of the State to the end that such debt shall be payable in annual installments, the last of which shall fall due and be paid within fifty years after such debt shall have been contracted, and to the end that no such debt shall be contracted for a period longer than the probable life of the word or object for which the debt is to be contracted.

Mr. Schurman — Mr. President, I should like to ask Mr. Stimson if I am right in the assumption that that refers to debts to be contracted hereafter.

Mr. Stimson — It necessarily does, Mr. President, because it provides that the Legislature shall make laws under which such debts shall be contracted.

Mr. Schurman — The point I wanted to bring out, Mr. President, was that I assumed this had no reference to refunding debts, that no city would be under obligation to refund its debts, and convert long term into serial bonds.

The President — The Chair assumes Mr. Stimson moves to recommit with instructions to report on his amendment.

Mr. Stimson — I do so move.

The President — Now, Mr. O'Brian moves to postpone further consideration of this measure and that the measure lie over until to-morrow morning with Mr. Stimson's motion.

Mr. Stimson — I have no objection, of course, to that.

The President — The Chair calls attention to the fact that every time an amendment is offered to a bill, there is a further postponement of its third reading, and is there any suggestion regarding the printing of this Proposed Amendment, or the printing of the bill as it would be if amended?

Mr. R. B. Smith — Mr. President, I would like to offer one more amendment to the bill in its present form.

The Chairman — Please send it to the desk.

Mr. R. B. Smith — With the motion to recommit.

The President — That will make four pending amendments to this bill. Is there any suggestion as to the printing of these amendments?

Mr. Wickersham — Mr. President, I was about to rise to move that the proposed amendments be printed for the use of the Convention when the matter comes up for consideration to-morrow morning and to express the hope that Mr. O'Brian's motion would prevail. I do not think we ought to be expected to vote upon this important measure without being able to consider these proposed amendments in connection with the bill.

The President — It is moved that the third reading of the

pending bill be laid aside until to-morrow morning, and that in the meantime pending motion to recommit, amendments be printed for the information of the Convention. Is there objection? The Chair hears none and the matter is laid aside by unanimous consent.

Mr. Austin — I desire to send to the desk a proposed amendment to this bill which I think should be printed with the others, but I desire to make the statement that I shall not press it if the Stimson amendment prevails.

The President — Is there objection to the printing of Mr. Austin's motion, together with the other motions respecting the cities' finance bill. The Chair hears none, and that motion is ordered printed with the others.

Mr. Deyo — I would like the privilege of sending to the desk an amendment to this bill, to be printed. My suggestion is this, if the Chair will pardon me, for I suppose the bill is now really away from the desk. I have felt that this is one of the most important financial suggestions that has been made to this Convention. I have this suggestion to make: Let the bill stand as it is and make a further provision that the Legislature may by special act make some contrary provision. I realize the fact that this suggestion is contrary to the policy followed by this Convention prohibiting special legislation with respect to particular cases, but as I understand the provisions of this bill, they are very important, and will be very advantageous to the various municipalities in restricting the amount of their bonded indebtedness. It seems to me that we might pass the bill in its present form with the provision that if a case should arise where it would work a hardship a special act of the Legislature might relieve the municipalities from that hardship. I desire to send up an amendment to that effect, if there is no objection.

Mr. Wickersham — I think it would be of assistance to the members if these amendments which are ordered printed could be printed and submitted to the members of the Convention this afternoon. I would ask that the Secretary be asked to have them printed and submitted to the Convention as soon as possible. It would very greatly assist the examination of the bill.

The President — The Secretary will take note of that. Is there objection to the printing of the motion of Mr. Deyo with others? The Chair hears none and it is so ordered.

The Secretary suggests that Mr. Deyo must send up his amendment immediately.

Mr. Deyo — I will do so.

The President — The Secretary will read the title to the first bill on the calendar.

The Secretary — No. 841, by R. B. Smith. To amend section 10 of article 3 of the Constitution, in relation to the powers of each house of the Legislature.

The President — The bill is now open for debate. There being no debate, the Secretary will read the bill.

The Secretary —

Proposed constitutional amendment to amend section 10 of article III of the Constitution, in relation to the powers of each house of the Legislature.

The Delegates of the People of the State of New York, in Convention assembled, do propose as follows:

Section 10 of article III of the Constitution is hereby amended to read as follows:

Section 10. A majority of the members elected to each house shall constitute a quorum to do business. Each house shall determine the rules of its own proceedings and be the judge of the elections, returns and qualifications of its own members and shall choose its own officers. The Senate shall choose a temporary president. The Assembly shall choose a Speaker. If the Lieutenant-Governor become Governor the temporary president shall become Lieutenant-Governor for the residue of the term. If the Lieutenant-Governor be impeached or be unable to discharge the duties of the office or be acting Governor, the temporary president shall act as Lieutenant-Governor during such impeachment or inability or while the Lieutenant-Governor is acting Governor. If the Lieutenant-Governor refuse to act as president or be absent from the Chair, the temporary president shall preside. If the Speaker of the Assembly be unable to perform the duties of the office or be acting Governor, the Assembly may choose a temporary Speaker who shall act as Speaker during such inability or while the Speaker is acting Governor or until a Speaker is chosen.

The President — The Secretary will call the roll.

Those who voted in the affirmative were: Messrs. Adams, Ahearn, Aiken, Allen, F. C., Austin, Baldwin, Bannister, Barnes, Barrett, Baumes, Bayes, Beach, Bell, Berri, Betts, Blauvelt, Bockes, Brackett, Brenner, Burkan, Buxbaum, Clearwater, Clinton, Cobb, Coles, Dahm, Daly, Deyo, Dick, Donovan, Dooling, Doughty, Dow, Dunmore, Dykman, Eggleston, Eisner, Endes, Eppig, Fancher, Fobes, Fogarty, Foley, Ford, Franchot, Frank, Gladding, Green, Greff, Haffen, Hale, Harawitz, Heaton, Hinman, Johnson, Jones, Kirby, Landreth, Latson, Law, Leggett, Lennox, Lincoln, Linde, Lindsay, Low, Mandeville, Martin, F., Martin, L. M., Marshall, Mathewson, Meigs, Mereness, Mulry, Nicoll, C., Nixon, Nyc, O'Brian, J. L., Olcott, Ostrander, Owen, Parker, Parmenter, Parsons, Pelletreau, Phillips, J. S., Phillips,

S. K., Quigg, Reeves, Rhees, Richards, Rodenbeck, Rosch, Ryan, Sanders, Sargent, Schurman, Sears, Sharpe, Sheehan, Shipman, Smith, A. E., Smith, E. N., Smith, R. B., Stanchfield, Standart, Steinbrink, Stimson, Stowell, Tierney, Tuck, Unger, Vanderlyn, Van Ness, Wadsworth, Wafer, Wagner, Ward, Webber, C. A., Weber, R. E., Weed, Westwood, Whipple, White, C. J., Wickersham, Wiggins, Williams, Winslow, Wood, Young, C. H., Young, F. L., President — 132.

The President — One hundred and thirty-two have voted in the affirmative. This proposed amendment, having received the affirmative votes of a majority of all the members elected to the Convention, is adopted. The Secretary will read the title of the next article.

The Secretary — No. 846, by Mr. R. B. Smith. To amend Sections 6 and 7 of Article IV of the Constitution, in relation to succession to the office of Governor.

The President — The amendment is open to debate under the rules.

Delegates — Question.

The President — There being no debate, the Secretary will read the text.

The Secretary — The Delegates of the People of the State of New York in Convention Assembled do propose as follows: Section 1. Section 2.

The President — The Secretary will call the roll.

Those who voted in the affirmative were: Messrs. Adams, Ahearn, Aiken, Allen, F. C., Austin, Baldwin, Bannister, Barnes, Barrett, Baumes, Bayes, Beach, Bell, Berri, Betts, Blauvelt, Bockes, Brackett, Brenner, Burkan, Buxbaum, Clearwater, Clinton, Cobb, Coles, Daly, Deyo, Dick, Donovan, Dooling, Doughty, Dow, Dunmore, Eggleston, Eisner, Endres, Eppig, Fancher, Fobes, Fogarty, Foley, Franchot, Frank, Gladding, Green, Greff, Haffen, Hale, Harawitz, Heaton, Hinman, Johnson, Jones, Kirby, Landreth, Latson, Law, Lennox, Lincoln, Lindsay, Low, McKinney, Mandeville, Marshall, Martin, F., Martin, L. M., Mathewson, Meigs, Mulry, Nicoll, C., Nixon, Nye, O'Brian, J. L., Olcott, Ostrander, Parker, Parmenter, Parsons, Pelletreau, Phillips, J. S., Phillips, S. K., Quigg, Reeves, Rhees, Richards, Rodenbeck, Rosch, Ryan, Sanders, Sargent, Saxe, J. G., Saxe, M., Schoonhut, Schurman, Sears, Sharpe, Sheehan, Shipman, Smith, E. N., Smith, R. B., Stanchfield, Standart, Steinbrink, Stimson, Stowell, Tuck, Unger, Vanderlyn, Van Ness, Wadsworth, Wafer, Wagner, Webber, C. A., Weber, R. E., Weed, Westwood, White, C. J., Wickersham, Wiggins, Williams, Winslow, Wood, Young, C. H., Young, F. L., President — 125.

The President — The Secretary announces that 125 votes were cast in the affirmative. A majority of the delegates elected having voted in the affirmative, the proposed amendment to the Constitution is declared adopted. The Secretary will read the title of the next Proposed Amendment.

The Secretary — No. 844, by the Committee on Suffrage. To amend Section 4 of Article II of the Constitution, in respect to the enactment of election and registration laws.

The President — The Proposed Amendment is open to debate under the rules.

Mr. Brenner — Mr. President, I offer the following amendment.

The Secretary — By Mr. Brenner. On page 2, after the word "registration", on line 11, insert the words "and who shall at the same time establish their right to register from the election district in which they claim residence".

Mr. Brenner — Mr. President, while I am in favor of the general proposition of providing means for the registration of persons necessarily absent on days of registration, it seems to me that additional precautions should be taken to insure that those who seek that right are entitled to exercise it, and, therefore, that amendment is suggested, that they should establish their right to register on the day they make their first appearance.

Mr. Lincoln — I do not think that this amendment offered by Judge Brenner is essential to the working out of this amendment proposed yesterday along the lines which are contemplated. That is, Judge Brenner merely proposes to require the establishment of the right of the voter to vote in the election district at the time when he personally appears, while my amendment which is on your files provides that he must establish that when he causes an affidavit to be filed upon the first regular day of registration anyway. In other words, Judge Brenner would require him to establish twice his right to vote in the election district in which he registered. It seems to me that that is superfluous. It is sufficient if he goes to the Board of Registration upon the special day of registration, which the Legislature will provide, and there establishes with all the formalities which are required of a voter registering personally, his right to vote. It seems to me that one of the things that he must first establish, must be his right to vote in the district from which he registered, and then we have the additional precaution here in the shape of a requirement in the last sentence of the amendment, that he shall be required to establish his continued right to vote in the election district for which he is registered upon the first regular day of registration.

The President — The Convention must be in order. It is impossible for anybody to hear.

Mr. Brenner — Is it not preferable to establish the right of registration on the day of his personal appearance rather than to rely on the affidavit which follows — subsequently?

Mr. Lincoln — I assume, Judge Brenner, that the Legislature in enacting laws pursuant to this provision, would require, and would have to require, that the man making this preliminary registration, would have to establish his then right to vote in that district.

Mr. Brenner — What is the objection to the system of establishing his right when he makes his personal appearance?

Mr. Lincoln — It seems to me a duplication and an unnecessary addition of language in the amendment here, and in the Constitution; and then, as a practical reason, the Convention has so much business upon its hands in such a short time that it seems to me that, unless this amendment of Judge Brenner adds something essential to the proposition we ought not to take the time and send it back to be printed and to be resubmitted to the Convention.

Mr. Brackett — I offer the following amendment which I earnestly hope the delegate in charge of the measure will accept, because I am greatly interested in the proposition that he is advancing and I want to have it in as good shape as it can be.

The Secretary — By Mr. Brackett. On page 2, line 9, after the word "will" insert the word "probably". On page 2, line 14, strike out the word "further" and after the word "appearance" insert the words "for such purpose".

Mr. Brackett — The object of the word "probably" is manifest from the context and from the insertion of the word on the line. A person in advance cannot truthfully swear that he will not be able to be present, but he can swear that he probably will not be able. I can conceive how it would be impossible for me to make such an affidavit myself, in view of the engagements that are made from day to day. He ought not to be required to swear absolutely that he will not be present. He ought to be allowed to make the affidavit or to appear before a board and swear that he probably will not be present. The amendment in line 11, I think, is essential to prevent any doubt or obscurity. The word "further" as used there would seem to indicate any further appearance than the one on the first day of registration, when he is there for the purpose of establishing his continued right. I think the antecedent of the word "further" is in the same sentence and does not go back to the sentence before, that is, that it shall not require any further personal appearance after he has first appeared and said that he probably would not be able to be present; and second, when he has been present on the first day of registration to establish his continued right. The word "further" should

be stricken out and instead of it there should be the language " but shall not require personal appearance for such purpose ", that is, for the purpose of establishing his continued right to vote, as mentioned in the first part of that sentence.

Mr. Westwood — The members of the Convention will doubtless recall that when this measure was under discussion in the Committee of the Whole I moved to strike out the language in the measure as reported by the Committee which sought to permit absentee registration. There were a number of members of the Committee of the Whole who agreed with me in the contention that it was not wise to permit the Legislature to enact laws which would lay the Election Law open to total obliteration of personal registration. Since that time Mr. Lincoln has proposed the language we are now considering. I have examined it very carefully, as have a number of other members of the Convention who have been interested in this matter, and it seems altogether satisfactory from every viewpoint. If I may direct your attention for a moment to the proposed amendment by Senator Brackett in line 9 in which he desires to introduce the word " probable " before the word " occupation ", allow me to call the attention of the Senator and the members of the Convention to the fact that under Mr. Lincoln's language it will not be necessary that the elector shall swear that he will be absent; all that is necessary for him to do is to swear, or to prove by proper means, that he is engaged in an occupation and that one of the attributes of the occupation is that it will require his absence. He does not have to swear as to any intent on his part; all he has to swear is as to the character of the employment. There is a further thought that I had yesterday when Mr. Brackett proposed this, and which is now suggested to me by Mr. Marshall, that the word " probable " would open the door wide. Any one could swear that an attribute of his employment might *probably* be thus and so, might *probably* require his absence, but we compel him to be fair when we require him to swear that one of the characteristics of his occupation is that it will require his absence. As to the proposition offered in line 14, I think the language as printed in the bill is altogether efficacious for the purpose. There is only one personal appearance to which the section refers, the general personal appearance. That is the personal application. No person could in any way construe it otherwise than exactly as would occur to the minds of every member of the Convention. It hardly seems necessary to send this matter back for reprint to accomplish something which is of doubtful value. Upon Mr. Brenner's motion, upon his proposed amendment here, he would impose upon the traveling salesman or others of the same class a twofold added burden. Under the pro-

posal as it now comes from Mr. Lincoln's pen the traveling salesman must make a personal appearance exactly as any other elector. He must, in addition to what is required of other electors, furnish proof, and it so happens that such proof shall be required on the first day of registration, to establish his right by proof. Under Mr. Lincoln's proposal he must register as everybody else must register, namely, personally, and then do something more, namely, establish his right to vote by proof on the first day of registration. Now, Mr. Brenner would impose on him a second added burden, namely, he would make a constitutional provision requiring the traveling salesman or others in similar classes personally to register and at that time do some particular thing that is not in the Constitution required of the ordinary elector. I have no doubt in the world that the language proposed by Mr. Lincoln is adequate to require of this class of individuals exactly the same kind of personal registration as everybody else is required to undergo, and then do the added thing which seems necessary under the circumstances. I think all these amendments to the printed bill should be defeated.

Mr. Brenner — It is clear from the language of the proposed amendment that all that is required on first appearance of the absentee is that he shall make oath that he contemplates being absent on the days of registration. There is no provision as to what is essential to establish his right to registration except that he follows a vocation or profession that may call him away. All that is asked by my amendment is to establish the right for him to register from a given place that he claims as his residence so that we may have opportunity from the time of his registration to the time of the following days to ascertain that he has a legal right to do the things he is attempting to accomplish. Now, the great fraud on election day, and which we have always warned the election officials of, takes place in the last hour of the day when those who have failed to appear have their names voted upon and every precaution should be taken to prevent that in the future.

Mr. Dunmore — Mr. President, I desire to offer an amendment.

The Secretary — By Mr. Dunmore: On page 2, line 7, after the word "five" insert the words "nor less than three".

Mr. Dunmore — Mr. President, the purpose of that amendment is this —

The President — The gentleman will suspend until there is less confusion. The Convention will be in order. The gentleman will proceed.

Mr. Dunmore — The Legislature might fix the registration days referred to here so near the time of the other registration

that the benefits that this amendment is intended to confer might be denied to the very class of electors that it was designed to benefit. That is, it might be fixed so late that commercial travelers, who are the principal ones to be benefited, might be away on their trips so that it would absolutely result in no benefit to them. Furthermore, the registration days may be fixed so late that there would not be ample time to investigate whether those people registering had the right to vote or not. And for that reason, I have suggested this amendment, that the last day for this class of registration should not be less than three months before election time. That will give a leeway of two months during which these days may be fixed, and would come during the vacation season when everybody that this amendment is designed to benefit could register. I hope it will be accepted by the Committee.

Mr. Mereness — It seems to me the course of this amendment since it first came from the Committee on Suffrage is a very apt illustration of the great difficulty that we will have in the effort to provide in the Constitution of the State that the burdens of citizenship will rest equally upon all citizens of the State as nearly as possible. It seems to me that there is much more reason for throwing the door wide open for the Legislature to grant the privilege of registration in other methods than by personal application, rather than to put the matter upon vocational lines; and I think if we put the matter as it is now the Legislature will be importuned for a great many years to come in the same manner as it has been in reference to exemption from jury duty and it will not be very long before we will find that we will have from thirty to fifty different classes of people in the State of New York who are to be granted special favors in the matter of exercising their rights of citizenship in the State.

Mr. Lincoln — I would like to ask if Mr. Mereness appreciates that there is no requirement for definition of vocations and occupations in this bill. That was in the original bill, but not here.

Mr. Mereness — You have the word "vocation" in it.

Mr. Lincoln — But there is no proposition of defining "vocation" by statute. The proposition contemplated by this bill is that any man, whatever his vocation or occupation, who can swear that that vocation or occupation will take him away from his district upon the days of regular registration will be entitled to register specially as provided here. There is no proposition for defining. This does not contemplate any definition whatever of particular occupations which are to be inserted. That was the original bill of the Committee. That is not here now.

Mr. Mereness — If that is true, Mr. President, I cannot see any use of using the word " vocation " in the Constitution at all.

Mr. Wickersham —Mr. President, I hope none of these amendments will prevail. It seems to me that Mr. Lincoln has worked out an admirable solution of this problem. Let me point out that we are not engaged in framing the statute, to exercise the authority proposed to be conferred by this constitutional amendment. The amendment proposed lays out very broad lines within which the Legislature may enact laws to enable a class of persons whose vocation is such as to make it probable that they will not be present where they must register on the days fixed for registration, to prove their right to vote in the district, and thereafter, if they are absent, to supplement that proof by the written evidence of their continued right to vote in that district. The matter has been very carefully considered. I think it is much better in its present form than it would be with any of the amendments offered, and I sincerely hope that it will be adopted just as it is.

Mr. Marshall — The measure is in the interest of justice, and protects the rights of a worthy class of citizens. There is no occasion for the amendment of Judge Dunmore. He has apparently overlooked the carefully chosen language of this provision, which requires registration, and personal registration, on the part of those who are unable to appear at the regular days of registration in person. That is the only exception which is made to the rule laid down with regard to personal registration. There is merely declared to be a class of those engaged in a regular vocation or occupation which will occasion their absence from the county during each of the regular days of registration, who are not obliged to appear in person on the regular days of registration, but who may appear on other days fixed by statute for personal registration. As to them, the provisions of section 4 apply, which deals with the general subject of registration; that laws shall be made for the regulation of elections and for ascertaining by proper proof the electors who shall be entitled to the right of suffrage thereby established, and for their annual registration. That is the requirement of the Constitution as to every class of voters who are to be registered. That harks back to article II, section 1, which refers to the qualifications of voters. Every man who seeks to be registered under the provisions of this new section is obliged to indicate, on his application for registration, that he has all the qualifications which are set forth in Section 1 of article II. Therefore, to repeat that same requirement, as is suggested by Judge Brenner, is not only unnecessary but would seem to lead to confusion. All that need be done is to express the provision that in this exceptional case it is not necessary to appear

for personal registration on the regular days for registration. The Proposed Amendment of Judge Dunmore is likewise unnecessary because there is certainly a time limit prescribed. It shall not be more than five months prior to the day of election that this substituted personal registration shall take place, and it certainly must have occurred prior to the first regular day of registration, because it is provided that the law shall require every elector so specially registered to establish on the first day of registration his continued right to vote. There is clearly given by the statute a time limit and an opportunity to investigate as to the qualifications of all voters and as to their identity.

Mr. Brenner — It is provided that special registration is to be provided for, accompanied by the subsequent provision that laws referring to special registration shall require electors to do specific things. That is required when there is no personal appearance.

Mr. Marshall — There is special registration or personal application before such boards or officers as the Legislature shall designate. That, therefore, deals with the time of registration of certain persons who are designated in this provision, but requires them to personally apply and to conform necessarily with the regular requirement as to the qualification of voters.

Mr. Dunmore — Is there any provision in this amendment as it is now presented to the Committee that prevents the Legislature from fixing special registration days a week or ten days prior to the regular registration day?

Mr. Marshall — No, nothing in so many words. We must presume that the Legislature will give effect and weight to the intention of the framers of the Constitution.

Mr. Dunmore — I want to fix it so that it will surely be effective.

Mr. Cullinan — The question of absentee registration has been before the Suffrage Committee for quite a while and it has been found in the consideration of the question that it has been one of the most difficult amendments to submit to this Convention for its approval. You will recall that the first bill provided for absentee registration of distinct classes and our answer to that was that it was to provide for those who had applied. The Convention declined to approve such a bill and a substitute for it was submitted to the Convention which was largely framed by Senator Saxe who had given a great deal of attention to the question of elections in this State. That bill did not meet the approval of the Convention, for the reason, apparently, that it was feared that the advantages were not equal to the opportunities of abuse. Now, we have been passing in this State for a number of years a

good deal of legislation making it more difficult for a voter to vote intelligently and effectively in this State, and the election laws seems a good deal like the handle on a jug, all on one side. Now, let us try to do something to enable the voters of this State to exercise suffrage with as few impediments as possible. Now, this bill of Delegate Lincoln is, perhaps, the best bill that could be produced, and will answer, as nearly as I can see, all of the objections to the dangers which may lie lurking in the operation of the bill. I do not believe that the amendment of Judge Brenner or Judge Dunmore ought to pass. We must leave something to the Legislature, as has been done in other States of the Union, where absentee registration is in operation, without any of the dangers which are suggested by members of this Convention to-day. I think the bill is a good one, and as good a one as can be drawn, and that any abuses which are likely to arise are minimized to a very small degree.

Mr. E. N. Smith — In view of the present provisions of the Constitution, I cannot see what occasion there is for this proposed amendment. It is not a provision for absentee registration. It is a provision for personal registration at a different time than the time when the general registration takes place. There is nothing in the Constitution that prohibits the Legislature from passing such laws now, so far as I can see.

Mr. Lincoln — That may be so, strictly, but the Legislature has consistently refused to pass such laws upon the ground that the Constitution requires a voter to be a resident of his election district for thirty days prior to the day of election, and they have held that you could not permit registration prior to that thirty days because if you did the man could not then state that he was a resident of the district for thirty days. This is intended to make it so that a voter can register prior to the thirty-day period.

Mr. E. N. Smith — Well, does this provision provide for the elimination of the provision requiring a residence of thirty days prior to the day of election?

Mr. Lincoln — No, not at all, Mr. Smith. It simply permits him to register provisionally, as it were, prior to the thirty-day period, and within the thirty-day period he must establish that he is a resident.

Mr. E. N. Smith — I do not see then that this provision is at all necessary, because the Constitution provides that the Legislature shall provide for the registration of voters, and it also provides that such registration shall be completed at least fifteen days before the general election, and then it goes on and says that in cities and villages of 5,000 inhabitants and over there shall be

personal registration, but it does not say anything about the time when the registration shall take place. It seems to me that we are simply enacting into the Constitution a power which the Legislature already has.

Mr. Wiggins — I was somewhat interested in this subject, because of the fact that I introduced an amendment for the purpose of giving electors who should be absent on all the days of registration an opportunity to be placed upon the roll. The object sought by others, including myself, was to permit Federal employees and other men to register without going to the expense of coming back home. That was one of the great arguments made at the time, to give them an opportunity without causing them that great expense of coming from the place where they might be at registration time. Now, if that was good as an argument then it is good as an argument now, and this bill is a sham, because if you will read it it still requires a man who may be in Washington to come home and at his expense go through the same thing, just as he would have to do on days of personal registration, except, it says, that it may be done five months before. Now, the language is very clear. Laws may be enacted to provide for registration on personal application, on a day or days not more than five months prior to election. Now, although that be the object of this bill, it is not accomplished, because a man must go and must go personally before some board and register. Mr. Westwood by his eloquence convinced me that that was all wrong, and was going to break down the bars surrounding the protection of the electors and protection of the election and preventing fraud. This accomplishes no purpose which was sought by any of those bills, and Mr. E. N. Smith, it seems to me, has fully pointed out that the Legislature has the right to-day to do this very thing which we are now attempting to do in the Constitution. In other words, I believe if you want to give these men an opportunity of registering without the expense, or without the necessity of coming home from their labors from some place, then you ought to pass the bill that was originally proposed by Mr. Steinbrink, and not attempt to pass this measure which is simply a sham and fraud, so far as saying to the commercial men of the State and to the Federal employees that they may register without any expense, because it will not accomplish that purpose.

Mr. Steinbrink — Mr. President and gentlemen: While it is difficult to disagree with my dear friend Wiggins, I must disagree with him nevertheless. I believe that this does accomplish that which the proponents of the original measure sought to accomplish, because the fact remains—

Mr. Wiggins — We sought to permit men, did we not, Mr. Steinbrink, to register without the expense of coming back and without the necessity of personal application?

Mr. Steinbrink — Yes, sir.

Mr. Wiggins — Now, then, by this bill in the fifth and seventh lines requires that a man must come back and do it personally?

Mr. Steinbrink — It does not say that he must come back, for this fact appears, that all of the Federal employees are in the city where they reside, or in the State where they reside, at some time during the summer months, and that is why we have put in here the five months provision, and if the figures that are given me are correct, there are in this State 162,000 commercial travelers; and they have been here and told us that they are in the city or State during the latter part of June and July, and if you will permit them to register personally, they are only too glad to do it personally, but during the month of October they are not in the State, and then they are willing to send back their affidavits of their continued right to vote. They are perfectly willing to meet every safeguard that you want to throw about it. Now, just one more word. On principle I would be inclined to agree with the amendment offered by Judge Brenner, but I think it is taken care of in this way. This measure provides on page 2, line 8, refers to this, laws may be made for special registration of whom? "Of such electors". Well, who are electors? The persons entitled to vote under section 1 of article II, as pointed out by Mr. Marshall. So that unless they fulfill all of the requirements of section 1 of article II, they are not electors, and if they are electors, they register personally on the day fixed by the Legislature, not more than five months before the election day, and they shall establish in the month of October their continued right to vote, and on election day they return and cast their ballots. I hope that the proposal as it comes from the Committee on Suffrage will pass.

Mr. M. Saxe — I just want to say this one word with respect to the expediency of this proposal. Now there seems to be in a great many minds around this circle the idea that we should be expedient in the treatment of the Constitution, to the end that in its submission to the people it will receive an overwhelming support. With that idea in view, I desire to call the attention of the Convention to this fact, that there is a very militant organization in this State in favor of this proposition, to wit: the Commercial Travelers' Association, and those gentlemen are very anxious to see this proposal enacted so that they may continue their interest in the government of the State. Now, those gentlemen, as you know, are frequently away, and they are deprived of

their opportunity to represent a very intelligent class of voters. These men belong to the class of men upon whom the prosperity of the country rests. It is one of the best things in the world for the improvement of government to have men of that class circulating through the State expressing their views on matters before the people.

This proposal will provide an opportunity for those men to impart their interest in governmental affairs and I trust it will prevail.

Mr. C. A. Webber — Mr. President, I just wanted to call attention to the fact that in my belief there is no requirement whatever under this measure if we are simply to require annual registration. That does not fix any time when we shall register, and that registration might be at the previous election, at the time the man votes, that might be his registration time; because that is "annual registration" if he votes annually. The putting of the five months clause in here does not say that the Legislature is confined to having registration five months before. There is no limitation when it shall be made. It may be made at any time during the year. I think therefore that the Legislature has full power without this amendment to do just as proposed by the amendment.

Mr. Doughty — Mr. President, I would like to make a statement, so that the record will show that personal appearance is not required on the day of registration. The proposal reads "Such laws shall require electors to establish on the first day of registration." Now, so far as this language goes, personal appearance might be required on the first day of registration, although later on it is provided that "further" personal appearance is not necessary. The question might arise as to whether that word "further" relates to a time after the elector has established his right to vote or before. So, I simply wanted this statement on the record to show that the proposal means that the electors need not appear personally on the day when they are required to establish their continued right to vote. I am in favor of this measure. Personally, I favor Judge Brenner's amendment, but I am heartily in favor of this measure.

Mr. Dunlap — Mr. President, the Committee on Legislative Powers has provided in their proposed amendment to abolish the State enumeration. If that is done, then this section ought to be amended on page 2, line 2, which says, "According to the last preceding state enumeration of inhabitants" and it seems to me that if we are going to abolish this enumeration, we won't have any State census or enumeration on which to base this proposition, and I should think that following the word "state" on

page 2, line 2, the words "or Federal" should be interlined. I will submit an amendment in just a moment.

Mr. J. G. Saxe — The idea of the Committee on Suffrage was that if the amendment failed on third reading, providing generally for a Federal census, that would be taken care of by the Committee which is bringing the different parts of the Constitution together. So we would better not put "federal census" in at this time. If adopted later on, then it will be put in by the Committee on Revision. That will be fully considered by the Committee on Suffrage and taken care of.

Mr. Dunlop — Well, that will be all right. I did not know that.

The President — Is there any further debate? The debate is closed. The Secretary will read the first motion to amend with instructions, which is the motion of Mr. Brenner. The Secretary will read.

The Secretary — By Mr. Brenner: Page 2, line 11, after the word "registration" insert the words "and who shall at the same time establish their right to register from the election district in which they claim residence."

The President — All in favor of the motion to recommit with instructions to amend as read will say Aye, contrary No. The motion is lost. The Secretary will read the second motion, that by Mr. Brackett.

The Secretary — By Mr. Brackett: On page 2, line 9, after the word "will" insert the word "probably." Page 2, line 14, strike out the word "further" and after the word "appearance" insert the words "for such purpose."

Mr. Brackett — They should be divided, Mr. President; the first one, first.

The President — Mr. Brackett calls for a division. The proposal will be divided. The question now is upon the motion to recommit with instructions to insert the word "probably" and report forthwith. All in favor of the motion will say Aye, contrary No. The motion is lost. The question now is upon the motion to recommit with instructions to amend as read by the Secretary in the second clause of Mr. Brackett's proposal. All in favor will say Aye, contrary No. The motion is lost. The question now is upon the motion of Mr. Dunmore, with instructions to amend as the Secretary will now read.

The Secretary — By Mr. Dunmore: Page 2, line 7, after the word "five" insert the words "nor less than three."

The President — All in favor of the motion will say Aye, contrary No. The motion is lost. The Secretary will read the text of the bill.

The Secretary — Proposed constitutional amendment: To

amend section four of article two of the Constitution, in respect to the enactment of election and registration laws. Section four of article two of the Constitution is hereby amended to read as follows: Section 4. Laws shall be made for the regulation of elections and for ascertaining by proper proofs the electors who shall be entitled to the right of suffrage hereby established and for their annual registration, which shall be completed at least fifteen days before each general election. Such registration shall not be required for town and village elections except by express provision of law. In cities and villages having five thousand inhabitants or more, according to the last preceding State enumeration of inhabitants, electors shall be registered upon personal application only. Laws may be made providing for special registration therein on personal application before such boards or officers as the Legislature shall designate, on a day or days not more than five months prior to the day of election, of such electors as shall then declare under oath that they are engaged in a regular vocation or occupation which will occasion their absence from the county during each of the regular days of registration. Such laws shall require electors so specially registered to establish, on the first regular day of registration, their continued right to vote in the election district for which they were registered but shall not require further personal appearance. Electors not residing in such cities or villages shall not be required to apply in person for registration at the first meeting of the officers having charge of the registry of electors.

The President — The question is upon the adoption of the proposed amendment. The Secretary will call the roll and the members in favor of its adoption will answer Aye as their names are called; the members opposed will answer No. The Secretary will call.

Those who voted in the affirmative were: Messrs. Adams, Ahearn, Aiken, Allen, F. C., Angell, Baldwin, Bannister, Barnes, Barrett, Baumes, Beach, Bell, Bernstein, Berri, Blauvelt, Burkan, Clearwater, Clinton, Cobb, Coles, Cullinan, Deyo, Donnelly, Dooling, Doughty, Dunmore, Dykman, Eggleston, Eisner, Endres, Eppig, Fancher, Fobes, Foley, Gladding, Green, Hale, Harawitz, Heaton, Hinman, Johnson, Jones, Kirby, Kirk, Landreth, Law, Lincoln, Lindsay, Low, McKean, McKinney, Mandeville, Mann, Marshall, Martin, F., Martin, L. M., Mathewson, Meigs, Nicoll, C., Nixon, Nye, O'Brian, J. L., Olcott, Ostrander, Owen, Parker, Parmenter, Parsons, Pelletreau, Phillips, J. S., Phillips, S. K., Reeves, Rhees, Richards, Rodenbeck, Ryder, Sanders, Sargent, Saxe, J. G., Saxe, M., Schoonhut, Schurman, Sears, Sharpe, Shipman, Smith, R. B., Stanchfield,

Standart, Steinbrink, Stimson, Tierney, Tuck, Unger, Vanderlyn, Van Ness, Wafer, Wagner, Ward, Webber, C. A., Westwood, Whipple, White, C. J., Wickersham, Williams, Winslow, Wood, Young, C. H., Young, F. L., President — 109.

Those who voted in the negative were: Messrs. Austin, Bayes, Betts, Bockes, Brenner, Buxbaum, Dahm, Daly, Dick, Donovan, Dunlap, Ford, Frank, Greff, Haffen, Latson, Leggett, Lennox, Linde, Mereness, Nicoll, D., O'Brien, M. J., Potter, Quigg, Rosche, Ryan, Sheehan, Smith, E. N., Stowell, Weber, R. E., Weed, Wiggins — 32.

When Mr. Ostrander's name was called he said: Mr. President, I would like to be excused from voting on this proposition. I have not had this matter on my files and had no opportunity to follow the amendments, therefore I ask to be excused from voting.

When Mr. Quigg's name was called he said: Mr. President, just one word. I think this bill offers opportunity for fraud and extends a wide invitation to abuse, so I vote no.

Mr. Ostrander — Mr. President, I have now somewhat examined the bill and it seems to me to afford some measure of relief and looks toward a little more enfranchisement of people who have heretofore been denied a vote, and I ask to be permitted to vote Aye.

The President — The Secretary announces 109 voting in the affirmative and 32 in the negative. Having received the affirmative vote of a majority of all the delegates elected, the amendment is adopted. The Secretary will read the next amendment on the calendar.

The Secretary — No. 845, by the Committee on Canals.

Mr. Clinton — Mr. President, the reprint of that amendment has not been placed upon the files and it is suggested that it be laid over until we go into the order of third reading again.

The President — The gentleman asks to lay over third reading No. 22, print No. 845, from the Committee on Canals, until the last print has been distributed.

Mr. Wickersham — Mr. President, it might save another reprinting and another delay if I should just now call attention to one or two verbal corrections, which it seems to me should be made in this bill. There are two or three obvious repetitions or obvious inconsistencies of language which I would like to call to the attention of the Chairman. For instance, on the first page of the bill, lines 6 and 7, is the provision, "nor shall any easement in or incumbrance on such canals of terminals be created;" two lines further on is the provision, "when necessary in the opinion of the superintendent of public works" two lines further on, I say, "when necessary in the opinion of the superintendent of

public works, easements in canal lands may be granted for purposes of bridge construction"— a totally inconsistent provision, with the prohibition two lines previous. Then on page 3, it says in lines 7 and 8, "the abandonment, sale or other disposition of canals or canal property shall be under and pursuant to general laws only"— that proposition was probably that it might be taken to conflict with the earlier provisions on page 2, authorizing the granting of easements in connection with the canal. I simply desire to call the attention of the Chairman of the Committee to these three provisions. I shall also, although it is not perhaps in order at the moment — but when we come to debate I shall move to strike out the words on page 3, line 16, "has been or which", in the sentence which reads: "Real property which has been or which may hereafter be appropriated for canal purposes shall be deemed to be held by the State in fee unless expressly taken for temporary purposes".

Mr. Vanderlyn — I rise to a question of privilege. The bill is not on the files, or at least several gentlemen cannot find it there. We cannot intelligently consider the discussion of the gentlemen without having the bill before us.

Mr. Wickersham — The bill is on most of the files. It is on all except possibly that of the gentleman who has spoken and his no doubt has been mislaid.

Mr. Clinton — I understand, Mr. President, that Mr. Wickersham is calling these matters to the attention of the chairman of the Committee on Canals.

Mr. Wickersham — I am calling them to the attention of the chairman of the Canals Committee before the bill is laid aside, simply for the purpose of facilitating disposition of the measure and saving further delay.

The President — The Secretary advises the Chair that the last print of this bill is upon the large files of the delegates, the files containing all the bills, but it has not been placed upon the small files containing the special orders.

Mr. Clinton — The question raised by Mr. Wickersham as to the exemption in the case of granting easements for bridge construction is, in my opinion, rather technical; more than that, it can be taken care of by the Committee on Revision. The criticism of Mr. Wickersham as to the provisions on page 3, relating to the abandonment, sale or other disposition of canals or canal property,— he is wrong as to that because the canals are defined and saved by the prohibition.

Mr. Wickersham — Mr. President, I merely desire to give notice. I shall move to strike it out when we come to discussion of the measure. I simply desired to give notice to the chairman

for his consideration. The bill is going over and we may discuss it when it is up again.

Mr. Clinton — As to the other, striking out — any amendment of that kind will be opposed. I do not wish at this time to consent to any further delay of this bill. It has been amended twice to meet just such propositions as this. It was originally put through the Bill Drafting Department, carefully examined, has since been before the Revision Committee and has been held by that Committee until last night, to assimilate the language of all these amendments.

Mr. Wickersham — Do I understand the gentleman is moving the bill over or moving the bill on?

The President — The bill is now being debated under the rule. The time for debate began at forty minutes after eleven. The chairman of the Committee on Canals has requested that the matter lie over until the next call of the calendar of third reading because of the insufficient distribution of prints. The Chair has asked, is there objection? Is there objection? The Chair hears none and the bill goes over by unanimous consent, fifty minutes remaining for debate under the rule.

The President — The Secretary will read the next order on the calendar.

Mr. J. G. Saxe — May I interrupt before the next order is reached? I just discovered that the printed bill on this calendar, the next order or the order after the next, the Conservation article, has been erroneously printed in a very serious respect. On page 3, lines 19 to 22, the language appears in this new print that: "Nothing herein contained shall prevent the State from constructing highways within the forest preserve but no highways shall be constructed across lands of the State excepting by unanimous consent of the conservation commission". That amendment was moved yesterday and was lost, and yet it appears in this bill. I have spoken to a majority of the members of the Conservation Committee already, around the chamber, the ones I could reach first, and that is the recollection of all of us.

Mr. Marshall — The record shows it is lost.

Mr. J. G. Saxe — The record, Mr. Marshall says, shows it is lost.

The President — The Secretary advises the Chair that the journal shows the motion to have been lost.

Mr. Marshall — There is another error in the printing. The provision, "Nothing herein contained shall prevent the state from constructing a state highway from Saranac Lake in Franklin county to Long Lake in Hamilton county and thence to Old Forge in Herkimer county by way of Blue Mountain Lake and

Raquette Lake", was retained in the bill, but that has been stricken out in the printing to make way for this provision to which Mr. Saxe has just called attention.

The President — The Committee on Revision will take note of the statements which have been made. The bill known as the Conservation Bill is not on the third reading calendar to-day. The next bill on the third reading calendar is the report of the Committee on Public Utilities, third reading No. 23, print No. 832. The Secretary will read the title.

The Secretary — No. 832, by the Committee on Public Utilities. To amend article V of the Constitution, by adding a new section thereto relating to Public Service Commissions.

The President — The bill is open for debate under the rule.

Mr. Wickersham — That provision has now been embodied in the report of the Committee on Governor and Other State Officers. It seems to me there is no need of debating this as a separate provision and I suggest that it be laid aside until the Governor and Other State Officers bill has been voted upon on third reading. It was originally adopted and then it was imported into the Governor and Other State Officers bill. It seems to me it would be better to lay it aside at this time and I think Judge Hale will agree to that.

Mr. Hale — There isn't any object in having it appear twice, Mr. President, and I suppose that is the better way to do it.

The President — Is there objection to laying this bill aside until the other measure referred to has been considered?

Mr. Hale — Just one suggestion. If there is to be any substantial alteration, I think now is the time to determine it.

The President — There is objection. The bill is still in the Convention, open to debate. Mr. Stimson.

Mr. Stimson — I was going to ask whether Mr. Wickersham and Judge Hale had considered the advantage of going ahead now at this comparatively early period of the week while we have this matter before us and getting as much work as possible done before the crowded hours that will necessarily come on Friday.

The President — That matter has been disposed of. The Convention will proceed with the debate. If there is no debate on the bill, the Secretary will read the text.

Mr. Wickersham — Mr. President, I think I have the floor and I desire to submit an amendment.

Mr. President — Mr. Bernstein has the floor.

Mr. Bernstein — I simply wanted to call the attention of the Convention to the fact that on line 3 of page 2 there appears the word "commissioners"—

Mr. Wickersham — Will the gentleman yield? I was going to rise to move to amend that, to conform with the amendment which we adopted in Committee of the Whole on the Governor and Other State Officers bill, you simply anticipated what I was going to move. I move, Mr. President, on page 2, line 3, to change the word "commissioners" to read "commissions".

Mr. R. B. Smith — I would like to inquire of Mr. Wickersham for the purpose of the Record, whether the use of the term "for cause" in line 7, page 1, is an interpretation — if it is his interpretation that the removal still remains with the Governor as an executive function or whether it makes it reviewable by the courts? And, second, whether it is intended that the term "for cause" shall be limited to the interpretation or definition of that term as made by the Court of Appeals?

Mr. Wickersham — Mr. President, I take it that, of course, that means that the Governor cannot remove one of these officers simply on impulse; there has got to be some reasonable cause for that action.

Mr. R. B. Smith — Then, Mr. President, I understand that there is an intention to change the interpretation from that given to the language in the present Constitution in the Guden case.

Mr. Wickersham — I am not aware of what language the gentleman refers to in the present Constitution, but the purpose in framing this amendment was to require any removal of these officials to be predicated upon the statement of a cause for their removal.

Mr. R. B. Smith —And such cause to be the causes in accordance with the interpretation of the words "for cause" as defined in 70 N. Y.?

Mr. Wickersham — I do not know what case the gentleman refers to. There is one case in which there was an expression in the minority opinion; it was not in a decision by the court.

Mr. Hale — I would like to inquire of General Wickersham whether the amendment made by him necessitates the reprinting of the bill.

The President — The Chair will inform the gentleman that it will.

Mr. Hale — Then I hand up another amendment for a verbal correction.

The Secretary — By Mr. Hale. Page 2, line 2, strike out the words, "the legislature shall". In the same line strike out the word "provide" and insert in place thereof the words "provided by law". Page 2, line 3, strike out the word "commissioners" and insert in place thereof the word "commissions".

Mr. Hale— Mr. President, that will make the last sentence read

like this: "Until otherwise provided by law, the existing commissions are continued with the jurisdiction and powers at present vested in them."

Mr. Wickersham — I withdraw my amendment because it is embraced in Judge Hale's.

The President — The Chair would like to inquire, does that make the language conform exactly to the language in the Governor and Other State Officers bill?

Mr. Hale — Not according to the print of that bill which I have on my file, because the removal was to be by the Senate, and that was amended. I have not the amendment, but I think it does not conform.

Mr. Wickersham — Mr. President, Judge Hale's point, as I understand it, is that the language, "until the legislature shall otherwise provide" may leave it open to provision by joint resolution in which the Governor has no part, and therefore he desires to modify that to read "until it shall be otherwise provided by law."

Mr. Hale — Mr. President, I am shown a copy of the reprint, and I believe that the amendment conforms exactly now to the reprint, third reading No. 27.

The President — All those in favor of the motion to recommit to the Committee with instructions to amend as indicated will say Aye, those opposed No. The Ayes have it and the motion is agreed to. Any further debate on the bill? There being no further debate, the bill will be laid aside for reprint. The Secretary will read the next order on the calendar.

The Secretary — No. 815, by the Committee on State Finance. To amend section 20 of article III of the Constitution, in relation to the appropriation of public moneys for construction purposes.

The President — The bill is in the Convention open to debate under the rule.

Mr. Stimson — The Convention will remember that when this proposal was under discussion in Committee of the Whole there were certain objections taken in reference to its application to grade crossings, and certain other objections taken in regard to its application to highways. On behalf of the Committee, I have taken the matter up very carefully, in respect to those objections, with the gentleman who suggested them. There has been a careful examination of the law in regard to grade crossings, and the situation which covers the duties of Public Service Commissions in that respect and we have come to the conclusion that the criticism made of the proposal in respect to its application to grade crossings was well taken. In the case of grade crossings, under the existing law, the Legislature has delegated virtually to the Public Service Commission its power of making

specific appropriation for the cost of the State's share in the elimination of grade crossings. The Legislature is in the habit of making a general appropriation of one hundred thousand dollars a year under the general law for that purpose, which covers the entire number of grade crossings to be contributed to that year. Thereafter, it authorizes the Public Service Commission to specially appropriate out of that sum such sums of money as may be necessary under the decisions of the Public Service Commissions to cover the expense of the State's share of the grade crossings which the Public Service Commissions decide to make. In regard to highways, I have been in conference with Senator Blauvelt and Mr. Barrett, and Mr. A. E. Smith, who represented the different sides of the objections to that; also with the Highway Commission. As a result of these negotiations I proposed an amendment which has met with the consent and approval of all of the different objectors who discussed the matter in the last debate, as well as with the Committee. I offer that and ask to have it read. It is to be added at the end of the section in question, page 2, line 4.

The Secretary — On page 2, line 4, after the word "expense" add the following: "This section shall not apply to the contributions of the State, to the cost of eliminating grade crossings or to adding in the budget for the construction of highways from the proceeds of bonds authorized under section 4 of article 7 of this constitution."

Mr. Stimson — The Convention will note that the effect of this amendment is to provide for the restrictions of the proposed amendment and shall not apply to the cost of eliminating grade crossings, nor to items in the budget for the construction of highways from the proceeds of bonds authorized under the regular provision of the Constitution.

The President — Is the Convention ready for the question upon the motion to recommit for the consideration of the amendment as indicated by Mr. Stimson?

Mr. Stimson — I had not finished, if the Chair please, the explanation of that amendment, my debate upon it. The amendment in regard to highways thus surrounds expenditures for highways with the precaution that the item in question must be placed in the budget. By being so placed in the budget, there will be an opportunity for the Legislature to cross-examine the Superintendent of Public Works in regard to the proposed appropriation, and to ascertain all the facts upon which the request for the appropriation is made. It also leaves special highways, that is, highways not paid for out of the proceeds of bonds, subject to the regular provisions of the proposal of the Committee on Canals.

Such special highways must have plans submitted, and estimates for the expenses thereon be also submitted. That provision was endorsed as regards special highways by the Commissioner of Highways. The only other criticism which was made in the debate, when the matter was in General Orders, was the question as to whether the proposed section applied to repairs or maintenance, and I then stated, as of the record, that it was the intention of the Committee, the deliberate intention of the Committee, to exclude from the operation of this section the cost of such repairs or such maintenance. It seems to me that the language of the provision follows that indication, and expresses that intention as clearly as the English language can do it. I therefore have submitted no amendment covering that point, because it is the opinion of the Committee that it was already adequately covered by the section. With that explanation, I submit the amendment.

Mr. Hinman — I am very much in favor of the Proposed Amendment, but I have been fearful lest the use of the word "construction" or "improvement" of any building, bridge or highway might interfere with the regular annual appropriation made for the repair and maintenance of the improved highways of the State which have been constructed out of the proceeds of the bond issue, and it must be perfectly apparent to all who are familiar with the situation that it is impossible to comply with the terms of this proposal as to the making of plans and estimates of the cost of the work of repair and maintenance of the improved highways prior to the time of the submission of a budget. For example, it is impossible for the Highway Department to determine how much money should be appropriated for these repairs until after the winter has passed, the spring has broken, and the roads are exposed to view, and the damage of the winter is open to public notice. Therefore, plans could not be made in advance, and I simply desire to make sure that it is the construction of the proposed provision, that it shall not include such estimates for repair and maintenance, regular repair and maintenance of the improved highways constructed from the proceeds of State bonds, and for that purpose I offer the following amendment to the motion offered by Mr. Stimson, an amendment to his motion.

The Secretary — By Mr. Hinman, to amend motion offered by Mr. Stimson as follows: Strike out the period at the end and insert as follows: "or for the regular repair and maintenance of the highways constructed from the proceeds of such bonds."

Mr. Stimson — May I ask unanimous consent to say in regard to that that it was the intention of the committee that the proposed amendment should not cover regular repair and maintenance, and that our purpose was in accord with Mr. Hinman's

purpose also. But the only difference between us is that we think his amendment is not necessary, but is covered by the other portion of the bill.

Mr. Hinman — Are we, then, to consider that in considering the word "improvement" the word "improvement" does not include the word "repair"?

Mr. Stimson — I have stated that several times.

Mr. Blauvelt — I think the Highway Law defines "improvement" and "construction" to mean new work. Those words are used in the Highway Law synonymously to mean new work, and all the way through the Highway Law "construction" and "improvement," those two words are used when applied to new work, and "maintenance" to repair. I don't think it is necessary to add Mr. Hinman's amendment in order to make certain it does not apply to maintenance.

Mr. Hinman — If I may be heard, just one other moment: I do not desire to incumber the Constitution in any way, and it having been made to appear perfectly by the record that it is the judgment of this Convention that the word "improvement" does not include the word "repair" in the sense I have thought it might, I therefore withdraw my proposed amendment to the amendments of Mr. Stimson.

The President — The question is on Mr. Stimson's motion to recommit and amend as indicated with instructions to report forthwith. All in favor of the motion will say Aye. Opposed, No. The motion is agreed to. Is there further debate? The debate is closed and the proposed amendment will be laid aside for reprinting. The Secretary will call the next order.

The Secretary — Third reading, No. 25, Print No. 838, by the Committee on Future Amendments to amend Article XIV of the Constitution in relation to future amendments and revisions of the Constitution.

The President — The proposed amendment is before the Convention and open to debate under the rules.

Mr. Schurman — Mr. President, I should like to submit an amendment.

The President — The Clerk will read.

The Secretary — By Mr. Schurman. On page 2, line 17, after the comma following the word "thereon" insert in italics the following: "Provided the majority vote in favor of such an amendment shall equal at least one-fourth of the aggregate number of votes cast for members of the assembly at such election." Page 3, line 6, after the word "thereon" insert a comma and insert the following in italics: "Providing the majority vote in favor thereof shall equal at least one-fourth of the aggregate number of votes cast for members of the assembly at such election."

Mr. Schurman — Mr. President, you will remember that we discussed this subject in Committee of the Whole. The Committee's bill provided that an adequate number of votes cast for members of the Assembly should be required. A good many of us thought that amending the Constitution ought not to be made too difficult, and I for one felt that that number was too high. It does seem to me, however, advisable that some members should be fixed and I propose in this amendment, you will observe not one-fourth of the voters of the State, but that merely one-fourth of those who at that election actually vote for members of the Assembly and who shall favor the proposed constitutional amendment.

Mr. Barnes — Mr. President, I sincerely hope that this Convention will consider this proposal made by Mr. Schurman favorably. It is a very small percentage of the vote that is asked for, one-fourth of the total. Very few amendments have been adopted by a less vote; but we establish the principle that the Constitution of the State should not be amended by purely a majority, a quorum of the people. We ought to establish some rule. One-fourth is very low, less than four hundred thousand at any election that has been held, and I sincerely trust, as this proposal was not voted on the other day, but only the one offered by the Committee, that this will be given favorable consideration.

Mr. D. Nicoll — Mr. President, as matters stand now the total vote cast for members of the Assembly does not equal the total vote for Governor or President. That, as we know, in 1912 was 1,580,000 votes. Now, let us assume that the vote for members of Assembly would be 1,200,000 votes. That is a liberal reduction. The purpose of this amendment is that no amendment to the Constitution shall carry unless it gets one-fourth of 1,200,000, or 300,000 votes. That is, we shall not change the fundamental law unless you have in support of the change 300,000 votes out of 1,000,000 and practically 600,000. Now, that is the proposition stated in the figures and that seems to me to be a most reasonable amendment. I am very strongly in favor of it for two reasons: First, because I think the present system has gotten to be, whatever it was when it was originally adopted, preposterous. Why, it has come to pass that you can amend the Constitution about as easily as you can pass an act through the Legislature, and even easier. Those interested send it to the Legislature, it passes two Legislatures, it is submitted to the people, and then what happens? Fifty thousand people vote on it. Only fifty thousand, and twenty-five thousand and one carry it, so that you can amend your Constitution by twenty-six thousand votes, or twenty-five thousand and a fraction. Isn't that the

reductio in absurdum in constitutional government? Haven't we at least reached bottom in our descent? Now what is the consequence of it all? The cause of it all and the consequence? The cause of it all is the magnificent indifference of the electorate towards constitutional things. Such indifference that people won't take the pains to even read or understand the proposed amendments. How many times has it happened that men as sufficiently or as well educated as we are have gone to the polls and had amendments put in their hands and have been ignorant of their purpose? What must be the situation of the person who has no comprehension of these matters, who has no relation to these things? I say it is necessary to put this in, in order to stimulate interest on the part of the electorate on constitutional questions and further, to put some check, if we can, upon that fatal habit of indifference towards representative government which history shows us has been the enemy of all republics.

Mr. Green — Mr. President, in my connection with legislative affairs I cannot recall an instance where ever before it has been proposed by a constitutional body to enact laws to punish electors for doing what I believe to be their duty in voting. Should the proposition before this body carry, it would simply mean to disfranchise those who assert their rights and use their privilege as electors, fall in line with us, and do vote. Every time there was not a sufficient number to meet this amendment they would be disfranchised. There is nothing else to it. I am not sure but that I will be willing to sustain as just, if I could, an amendment proposed to disfranchise men who do not participate in matters of this kind and perform their duties as electors, and I am not quite sure why there is this cheerful proposition of reaching out our helping hands to the people who will not take their privileges under consideration and perform their duties as electors. In my remarks a few days ago, I suggested that I have participated in voting and in meetings of taxpayers where less than ten per cent. of the vote expended hundreds of thousands of dollars in a very small city, and yet it was legal. The ones who did not do their duty were the ones who stayed at home and were disfranchised, not those who performed their duties. Personally, I sincerely hope that a proposition of this kind will be snowed under.

Mr. J. L. O'Brian — Mr. President, this is in substance the same question that we considered in Committee of the Whole, although the fraction of votes, which would be required to vote upon an amendment is made smaller. I opposed the proposition then and I am opposed to it now. You cannot stimulate any civic responsibility or sense of individual responsibility by legislation.

There has been no claim on this floor that a single constitutional amendment of a vicious character has ever been enacted by this process. There has been no claim and will be no claim that if this requirement had been in the Constitution the result would have been otherwise than it was upon the amendments that have been adopted in the past. Now, we may treat it as we like, and I am not going to repeat what I said the other day at length, but this proposal does make it more difficult to amend the Constitution. The people in general will see that fact and will have a right to interpret that fact as meaning that it is a further limitation upon their rights to deal with the fundamental law. I am not one of those who would make it easier than it is now to amend the Constitution, but I do believe that the present method has worked satisfactorily, that not a single evil result has followed its operation, and that it would be a very unwise thing for this Convention, without any crystallized popular demand on the subject, without any mandate from any party, or any body of individual people for this Convention to embark upon a policy of further restricting the power of amendment to the Constitution. You are simply taking on, gentlemen, one more purely adventitious article, which may react very seriously upon the Constitution. I wish to lay before the Convention this further thought, that if the vote in the Committee of the Whole the other day is any criterion, this Convention is going to insert in this Constitution some purely local provision, one of them relating to sub-ends of canals in the city of Buffalo, against which every newspaper in Buffalo is now protesting and many civic organizations. Now, do you mean to say that if you put that in the Constitution it will be necessary for the city of Buffalo, which alone is interested in it, when it shall undertake, as it certainly will, to have an amendment made to this Constitution, taking it out of the Constitution, do you mean to say that we shall go up and down the State interesting the whole State of New York in what is purely a local situation? The same argument applies to your courts in New York city. What does Buffalo care about city magistrates in New York city? Suppose the present Constitution does not work satisfactorily, must the people of New York go up and down the State interesting the whole State of New York in the subject? You cannot treat this, gentlemen, from the broad standpoint that this is the organic law containing only broad principles. Your Constitution contains many provisions which are of purely local application. That is a practical consideration which I present to your mind, and the other is the broad consideration that you are undertaking to make it more difficult in this Convention to amend the Constitution which we are pre-

paring, and I believe that your action will lead to serious resentment at the polls.

Mr. Quigg — Mr. President, I differ with Mr. O'Brian in the idea that if this amendment proposed by Dr. Schurman is adopted, it will not have a good effect in urging the people to think of and to consider constitutional amendment. Now, each of us must take his own experience into account. I have not been a member of the Legislature. I have not followed the debates on constitutional amendments, but I know that I take more interest in public matters than the average citizen does. I know I read the papers more carefully and see what is going on about public affairs than the average citizen does, and yet I have gone to the polls when constitutional amendments were being offered and I have stood there for half an hour or more, reading over the constitutional amendments that were proposed in the endeavor to understand what they meant. Now, if you can challenge the attention of our people in any way to what they are putting into the constitutional law, it seems to me it will be a good thing to do so. This situation that Mr. O'Brian suggests about Buffalo does not arise often. It ought not to be an argument here. It is too local and too much related to the city of Buffalo to be a proper argument on that subject, for most of the amendments do not relate to a canal point in the city of Buffalo, but relate to some broad principle, to the consideration of which the people's attention ought to be attracted. Now, the newspapers will reflect the fact on these amendments, when they come to be voted on, that it will require so and so many votes to pass them. We are certain of that. They help the public all they can in calling its attention to these things, and they will point out the fact that so and so many votes must be cast to pass an amendment, and they will call attention to the amendments and public attention will be riveted on them, or at least attracted to them. It does seem to me that the amendment proposed by Dr. Schurman is in the interest of arousing public sentiment and does not prevent a reasonable amendment of the Constitution. I earnestly hope it will be adopted.

Mr. Wickersham — I have heard my friend, Mr. Nicoll, say several times during the debates of this body that it was inexpedient to amend the Constitution, or any provision in any respect, unless experience had shown that the provision sought to be amended had not worked well.

Mr. D. Nicoll — Unless there was some evil which should be remedied.

Mr. Wickersham — Now, the correction sought to be made is avowedly based, not upon the fact that the present method of

amending the Constitution has resulted in the adoption of undesirable amendments, but for the purpose of goading the indifferent electors to coming out and voting in larger numbers and thereby, in larger numbers, evidencing their interest in public affairs. Mr. President, if I thought this amendment would at any time affect or stimulate a wider interest among our people in affairs pertaining to their State, I should favor Mr. Nicoll's amendment and Dr. Schurman's amendment. I do not think it will have that effect at all. Now, so far as the process of amendment goes, the existing provision has resulted, not in the enactment of a great many undesirable amendments, but in losing by the wayside a very large number of undesirable amendments, which were introduced into one house or the other of the Legislature and never emerged from the second Legislature to be submitted to the people. Let me remind you of what I called attention to only the other day, that since the adoption of the Constitution in 1894, 357 proposed amendments to the Constitution have been introduced into one house or other of the Legislature; that of that number only 49 passed one Legislature; that is, two houses of one Legislature; and of that number only 32 passed through two houses of the Legislature for two successive sessions and went to the people; and that of the number so passed 10 were rejected and 21 were adopted, and one remains yet to be voted upon. Now, therefore, the method which we have in this Constitution of securing the sober second thought upon proposed constitutional amendments, differentiating them from the ordinary legislative acts, has worked well, and thus far no one can point to a vicious amendment which has gone through as a result of this method.

Mr. Franchot — I just want to call your attention, Mr. Wickersham, to the fact that this present amendment contains a provision making it still more difficult for the Legislature itself to pass a proposition.

Mr. Wickersham — Mr. Franchot, I was about to say that the amendment now before the house on the order of third reading contains a provision which was designed to accentuate the importance of full consideration by the public of proposed constitutional amendments by requiring them to be considered in joint sessions of the two houses of the Legislature, and to meet the criticism which was made during the debate the last time this measure was up, I send to the desk and offer a resolution which will provide an automatic machinery for bringing before the two houses of the Legislature, in joint assembly, for their consideration any amendment which shall have passed either one of the two houses of the Legislature. The fact that it is brought there in joint session will be conveyed to the people of the State. It will no longer be possible for an amendment to go through without anybody knowing

that it has been passed, as has been the case sometimes in the past, although even then, before it got through the second Legislature, the Argus-eyed press had riveted attention upon it, and if it were a bad amendment it was attacked and killed and if it were a good amendment sufficient support was brought to its aid to get it through. But this method suggested in the bill introduced by the committee, in aid of which I have offered the amendment which will be read in a moment, would in a more dramatic way arouse public attention by calling up the measure in joint assembly of the two houses, once it had passed either one of them. Mr. President, it does seem to me that that is a better method of accomplishing the purpose which Dr. Schurman and Mr. Nicoll have in view than by seeking to restrict the enactment of these measures when they have gone to the people by requiring a given percentage of a given vote to pass them.

Mr. Betts — In reply to the remarks of Mr. O'Brian that there has been no public demand on this subject, I want to call the attention of this Convention to the fact that, when Hon. James W. Wadsworth, Jr., our present United States Senator, was Speaker of the Assembly, at two successive sessions of the Legislature the Assembly passed an amendment similar to this except that it required a majority vote instead of a 25 per cent. vote. The amendment was defeated in the Senate by those who were interested in getting through constitutional amendments. It seems absurd to me to require a majority vote of the representatives in the Legislature to pass a dog tax bill and then only require a ten per cent. vote to pass a constitutional amendment. This proposal simply requires 25 per cent. of the vote cast to pass a constitutional amendment. We are all the time passing laws in relation to a dog tax and other minor matters which require a majority vote of the representatives in the Legislature. We should require at least a 25 per cent. vote to pass a constitutional amendment. I am heartily in favor of this amendment.

Mr. Westwood — I wonder if my friend Mr. Betts and other members of this Convention have forgotten the memorable campaign of 1912. I know that I stood that fall upon the stump trying to convince those who had Progressive tendencies of the fallacy of the doctrine of the initiative and the referendum. My principal argument then, as I believe was the principal argument of others here in this chamber at that time, was that it was sufficiently easy to amend the Constitution, and that the method of amendment by the Constitution was adequate to remedy the supposed evils which impelled the advocates of the initiative and referendum to urge these alleged panaceas upon us. How can those of us who opposed the tendency of the day three years ago square our conduct

to-day with our conduct then by putting up the barriers and making it more difficult to change the organic law. I think that President Schurman's amendment should not prevail.

Mr. Parsons — The statement made by Mr. Betts to the effect that this Proposed Amendment or one even stricter in regard to constitutional amendments had twice passed the Assembly seems to me an argument against the amendment suggested by Dr. Schurman, because the Legislature then dropped the matter. The Legislature recognized that there was not a public demand for this change. On matters of great general interest this requirement would not apply, but I wish to point out that it would rise up to plague us on many matters of detail, where, as time goes on, it will probably be necessary to make some changes in the Constitution. We cannot look forward with exact knowledge as to what the needs in regard to the Constitution which we are framing will be in the next twenty years. I wish to point out some of the amendments adopted to the Constitution in times past which would have failed if this provision had been included, because it is not true that every amendment would have been adopted. The amendment for the commission of five to clear up the calendar in the Court of Appeals, carried in 1872, would not have been adopted if there had been this provision in the Constitution.

Mr. D. Nicoll — Why not?

Mr. Parsons — Why not? Because it did not receive 25 per cent. of the vote, and not 50 per cent. of the voters voted on the proposition. The vote for it was 176,038; the vote against it was 9,196. The total number of votes in that year was 829,482.

Mr. Quigg — May I ask a question? Would not this provision of Dr. Schurman tend to attract public attention to such an amendment and secure more votes for or against it? Is not that the point here?

Mr. Parsons — I do not think so. I cannot believe so, and I see no reason why more efficient administration of justice in this State — and this division of the Court of Appeals was directed to that end — should be hindered by a theoretical proposal such as is here proposed, such as our history has not shown is at all necessary.

Mr. Barnes — When the people voted in 1872 they knew there was no limitation; they knew there was no opposition to the measure.

Mr. Parsons — That is just when it is impossible to get the 25 per cent. vote. If there is a row, you get a large enough vote. The trouble comes when there is not a row. Here is the question of an additional justice in the second district. The vote for was 95,331; vote against, 25,578; total, 120,909. The total vote in the State was 901,535. That would not have been adopted. You

cannot arouse the people to vote on things where there is very little contention and they are very largely local matters. The same thing applies to the provision to authorize judges of the City Court of Brooklyn to be detailed for service in the Supreme Court. I have not had a chance to mark the others, but I remember that, so far as the provision which was proposed by the Committee was concerned, which was stricken out the other day, there was hardly any amendment which had been adopted which would have passed under that provision. I think the same thing would be true as to most of the amendments, if the amendments proposed by Dr. Schurman had been in existence.

Mr. Dunmore — Mr. President and gentlemen of the Convention: The argument of General Wickersham that, because no bad amendment had ever passed in this State, therefore we should not require any larger percentage of the vote than is now required, seems to me like the argument of the man who would say it is not necessary for him to lock his barn because he had never had his horse stolen. I believe in locking the barn before the horse is stolen, and I believe we should adopt some regulation by which a larger percentage of the vote is required in this State before our fundamental law can be changed. When a bad amendment is adopted, if it does come, it may be a very serious thing to the people of this State. If there is not enough interest awakened among the electors of the State to bring out a vote of 25 per cent. as to the vote for other things or the vote for members of Assembly, especially when they know that a vote of 25 per cent. is required in order to adopt an amendment, it seems to me the amendment cannot be one that ought to be enacted. Now, of course, everybody knows that if the amendment receives a majority, and there is no opposition to it, there is no necessity, practically, of anybody voting for it. Now, in the States where a large percentage of the votes are required in order to pass an amendment to the fundamental law, you will find that a very much larger percentage of the electors vote upon constitutional questions than vote in this State. I called your attention the other day to some of those figures. In one of the States the vote on a constitutional proposition was 117 per cent. of the vote cast for State officers. In another one it was over a hundred per cent. In this State, in 1896, when the proposition to permit the renting of camp sites in the Adirondacks was up, over a million voters voted on that proposition. It seems to me, Mr. President, that our provision for the concurrent resolution of two successive Legislatures, and then a vote by the people for the adoption of an amendment to the fundamental law, is the very worst form that could be devised. A person representing himself, or some group of people, comes in to the Legislature near

its closing hours, and suggests that some of his people would like to have an amendment to the Constitution adopted, and he asks some member of the Legislature to introduce the resolution. He says, "Why, it has got to go before another Legislature and it has got to go before the people, before it can become a law, and although I know there is not much time to give consideration to it, it won't do any harm to pass it here. And so it is introduced and passed without any consideration whatever. When it comes up in the next Legislature they are liable to say, "Why, the last Legislature considered this. It is all right." And the second Legislature passes it without giving it much attention. Then when it comes to the people, the people are liable to say, "This has been considered by two successive Legislatures, and it must be all right," and the people don't think it is necessary to give it any attention. You could not imagine, or you could not devise a scheme by which the Constitution could be amended that would require less thought and consideration than the one in operation in this State. Mr. President, I hope that this amendment will be adopted.

Mr. Deyo — Mr. President, this matter was very thoroughly threshed out in Committee of the Whole, and has been thoroughly threshed out here, and I want to invite the attention of the Convention to another provision on page 3 of the bill in question, lines 12, 13 and 14. Under the provisions of the Constitution as they now stand, the delegates elected are required to convene in the Capitol on the first Tuesday of April after the election. There was an amendment passed in the Committee of the Whole which provides that those delegates shall convene in the Capitol on the first Tuesday of December next ensuing after the completion of the canvass of the votes cast for delegates-at-large. Why, the canvass of votes cast for delegates-at-large is not made until the 15th of December after the election, and, therefore, under this amendment, I don't see how it is possible for the Convention to convene until after a year from the December following their election. I think I am not mistaken in the phraseology,— in my construction of the phraseology of that amendment. I, therefore, offer the following amendment, placing it back precisely as the constitution now provides.

The President — The Secretary has succeeded, I think, in mastering so he can read, the proposed motion sent up by Mr. Wickersham some time ago, and without objection he will read it.

The Secretary — On page 1, line 7, strike out the words "after sitting in joint session for the", and on page 2, line 1, strike out the words "discussion thereof", and insert in lieu thereof the following words: "after consideration in general session as hereinafter provided." Page 2, line 8, substitute a period for the semicolon, and insert after such period the following words: "On the

first Tuesday following the adoption by either house of the Legislature of any proposed amendment to the Constitution, the two houses shall convene in joint session for the consideration thereof, and thereafter the proposal shall be considered and acted on by the houses separately." Page 2, line 8, insert a bracket before and after the word "and", and begin a new sentence with the word "if".

Mr. Bernstein — Referring for a moment, Mr. President, to the discussion that has been had here in relation to the method of adopting amendments, it seems to me that while it is to be regretted, while it is deplorable that so few people have been necessary in acting upon amendments submitted to them for a vote, that nevertheless the proposal that has been offered here won't remedy the defect. It will simply make it impossible to have any amendments adopted. People will not take the necessary interest, and you cannot, as Mr. O'Brian of Erie said, you cannot force by legislative method an interest which they won't take out of civic pride. It seems to me, however, that something can be done and should be done to compel by force of circumstances an interest that you cannot compel by any such enactment as has been suggested here. Now, this is the point that I wish to make, that while a proposal such as we have suggested here by Dr. Schurman, won't permit the passage of any amendments, that while the provisions of the Constitution giving the right to Legislatures of two successive years to vote on Proposed Amendments will be a sufficient guarantee that those amendments are proper, that nevertheless there ought to be a fuller safeguard against the adoption of new Constitutions or revisions of Constitutions. It does not follow, Mr. President, that because an amendment is adopted by a very small vote of the people who are entitled to vote at the election for such an amendment, that amendment is not a proper amendment, any more than it would follow that if one hundred per cent. of the people voted for the amendment, it would be a proper amendment. All we can do is to safeguard against the adoption of hasty amendments that may be proposed under the stress of some public agitation. But, I suggest this: That, if you desire to get the interest of the people riveted upon the particular subject, upon the particular amendment, the way to do it is by providing that a new Constitution shall be submitted to the people at a special election, not at a general election. We all know, from common experience, that the overshadowing issues at a general election are the elections of the different candidates. In order to get some interest for your Constitution, or for your constitutional amendment or for your constitutional revision, I believe that if you substitute a provision for the holding of a special election

within a certain time after the adoption of your amendment, or of your revised Constitution, you will arouse sufficient interest in the people to come forward and vote properly. Now, we realize that it is an expensive proceeding to have special elections for the adoption of amendments. And so I won't go so far as to suggest that amendments that are passed by two succeeding Legislatures should be submitted to the people at a special election. I am willing to trust the Legislatures to safeguard the people in that respect. But I do want to submit, Mr. President, that in the adoption of an entirely new Constitution, or of a complete revision of a Constitution, that shall be submitted to the people at a special election. For that purpose, Mr. President, I want to offer the following amendment.

The President — The gentleman will send the amendment to the desk.

Mr. Wickersham — May I call attention to the fact that I have submitted an amendment striking out the last section which was introduced on my motion in General Orders?

Mr. Heaton — I favor the motion made by Dr. Schurman, because the principle of it is right. We have learned in this Convention that no business can be transacted without the presence of a quorum. I understand that we should make some provision in this Constitution so that when the people meet on the proper day to deliberate upon the question of whether or not they will adopt an amendment to the Constitution, there should be a quorum present; and the fixing of a rule that at least twenty-five per cent. of the whole number of voters must express themselves, provides that a quorum shall be present. I feel that no matter how meritorious a proposition may be, it should not become a law without the expression by a fair number of people showing that they are interested in it. I think there is no argument which follows from the fact that under the present rule of no quorum, a number of propositions which have been carried by a few voters would fail of being carried by the requisite 25 per cent., if the rule was as we propose now to have it, for, at the present time the newspapers pay no attention to a Proposed Amendment, a political party pays no attention to a Proposed Amendment, and the voters are barely able to find out for themselves what these amendments are; but under the quorum rule which is now sought to be made, every political party, every newspaper, all of the people would be interested to inform the voters what the proposition was and whether it had merits or not.

Mr. Bernstein — Mr. President, may I have my amendment read?

The President — Mr. Bernstein asks for the reading of his amendment. The Secretary will read.

The Secretary — On page 4, line 13, strike out the word "general" and insert in place thereof the word "special".

Mr. Franchot — I deem it hardly necessary to prolong the debate on the Proposed Amendment moved by Dr. Schurman, in view of the clear presentation of what seemed to be conclusive reasons for failure of the Proposed Amendment to pass. I do wish to say a word in regard to the Proposed Amendment, just read, offered by Mr. Wickersham, in regard to striking out the Proposed Section 5, to be submitted separately, which section was put in during the course of the debate in General Orders. It seems entirely unnecessary merely to hasten the vote of the people as to whether or not there shall be a Convention to revise the Constitution in 1916 or 1917, if, peradventure, the people should fail to approve of our efforts in this Convention. There are already three proposals which will have to be submitted separately ahead of the Constitution as a whole as we shall propose it and I have heard some sentiment to the effect that the Taxation Article ought to be submitted separately and quite conceivably before our deliberations close it will be decided to submit other propositions separately. It seems to me utterly unnecessary to cumber up the election machinery at this coming general election with this question when in the event of the Constitution failing of approval by the people that question can automatically be voted on later.

Mr. Barnes — Mr. President, to clear up the possible ambiguity in relation to the meeting of the next Convention, raised by Mr. Devo, I submit, if the words "of December" are stricken out of page 3, lines 12 and 13, so that the next Convention will convene on the first Tuesday, next ensuing after the completion of the canvass, there will be no question whatsoever as to the meaning of the proposal. The object of making this change was to make it possible that the next Convention might conclude its labors by the first of August, giving the electorate three months to consider what amendments may be offered at that time, rather than only six weeks provided for by the present Constitution. There has been some question as to how far the Convention would operate if it met here about the 20th of December. It would organize, appoint its committees, and then on adjournment of the Legislature a large part of the preliminary work, the committee work would have been done in some form or other and the Convention could get to work and certainly could complete its labors by the first of August which I think you will all agree with me would be a most excellent thing to do. I therefore move to strike out the words "of December".

Mr. Devo — Mr. President, in view of that amendment, it makes it perfectly clear, and I will withdraw my amendment.

The President — Mr. Deyo withdraws his amendment in view of the amendment offered by Mr. Barnes. Is there any further debate?

Mr. Bayes — Mr. President, I desire to enter a protest against any action by this Convention that will make amendments to the Constitution more difficult. If you examine the Constitution of 1777, you will find it contains a broad outline, plan or scheme of government. If you compare that with the Constitution of 1821 you will find that plan or scheme added to considerably. Again, if you look at the Constitution of 1846 you will find the instrument much increased in bulk. If you examine the Constitution of 1894 you find the same thing, an increase in the length of the document. Now, gentlemen, how was that brought about? Simply by the insertion into the Constitution of matters that are purely or very largely legislative. It has arisen from our desire to place restrictions upon the Legislature, to bind or shackle it in some way. Thus gradually we have loaded the Constitution down with purely legislative matters. That being so, it seems to me the argument of Mr. Westwood is unanswerable — if we are to include in the fundamental law legislative matters it is highly undesirable to make it more difficult to amend. In answer to Mr. Delancey Nicoll, I would say that if it is necessary to stimulate an interest in the exercise of the rights of franchise, to draw out a larger vote so as to procure a more complete expression of public sentiment on any given question, then Mr. D. Nicoll or others of us should get together and frame an amendment that will require the electors of this State to register and vote. In other words apply the principle of compulsory voting. That will force them to come out, or certainly tend to do so. If we cannot stimulate interest by the ordinary processes, such as education, newspaper and personal appeal, then I should favor compelling them to register and vote, especially on constitutional questions. I trust, Mr. President, that neither this amendment or any other making it more difficult to amend our Constitution will prevail.

Mr. Doughty — Mr. President, I am not going to take the time of the Convention on the proposal that I shall send to the desk, but merely shall call your attention to it. It relates to the question to be submitted to the people for their vote. As it now reads, the question is "Shall there be a Convention to amend the Constitution and revise the same?" I wish to change that by making it read "Shall there be a Convention to revise and amend the Constitution?" It seems to me that the latter language is clearer and more direct. I am sure that the language used in our Constitution ought to be the very acme of English. In regard to Mr. Barnes' proposal I think it inadvisable to make the

date of the holding of the Constitutional Convention to depend on some act which is to be determined after the vote is taken. Suppose, for instance, the canvass of the vote was finished on Monday, how is it possible to notify the delegates to meet here on Tuesday?

Mr. Barnes — Will the gentleman yield? You don't wait for the official State canvass until after the election returns, but you cannot convene the body until the official canvass is made. You will know the first week after election who is elected.

Mr. Doughty — Well, that depends upon something to be determined after election. I object. May the clerk read my amendment.

Mr. Hinman — Mr. President, I believe that everyone must have made up his mind more or less to this question. The Committee has felt that there should be something done to render a great deal more definite and certain the rule in matters of this kind and that the present rule was a very lax one, that it might lead to something perilous. But more than all else that we should do something to encourage discussion of amendments to the Constitution. The real defect in the present provision and rule is that it lacks the dynamics of public discussion, and we can only furnish that dynamics by placing it as a burden on some one to lead the discussion, and that burden should be placed on those who are the proponents of a change in the Constitution. It has been amply demonstrated in the states that have provided that rule, not adopted by the committee, of a majority vote; it has been amply demonstrated in those states that by reason of that rule they have been able to encourage a vast field of voters to come out and at least express some choice with reference to amendments to the Constitution; in some cases 80 per cent. and 90 per cent. of the entire vote of the state. We have in this amendment by Dr. Schurman expressed a modicum of what should be done. It simply means the expression, the substantial expression in favor of the measure. It meets with the approval of the committee in charge of the matter and I hope it will meet with the approval of this committee. With relation to the consideration of these matters in joint session by members of the Legislature, it is simply a matter of machinery. If it is well to have it done automatically, if it is necessary to leave it to the Legislature, the committee having it in charge, I am sure, will agree. I have no objection to agreeing to the motion of Mr. Wickersham that we strike out the last provision of the bill which was added when under discussion in Committee of the Whole. I personally believe that it is a desirable thing to submit that question separately, but it was not a matter which was considered by the committee itself, but only added by the Committee of the Whole.

Mr. President, I had intended mentioning a correction of one or two matters of punctuation brought to my notice and I therefore offer this following amendment.

The President — The time for debate has expired. The Secretary will read the first amendment in order, which is that offered by Dr. Schurman.

The Secretary — By Mr. Schurman, page 2, line 17, after the comma following the word "thereon" insert in italics the following: "Provided a majority vote in favor of such amendment shall equal at least one-fourth of the aggregate number of votes cast for members of the Assembly at such election."

Page 3, line 6, after the word "thereon" insert a comma and insert the following in italics: "Provided a majority vote in favor thereof shall equal at least one-fourth of the aggregate number of votes cast for members of the Assembly at such election."

The President — All in favor of the motion to recommit with instructions to amend as read and report forthwith will rise, and remain standing until counted. All opposed will rise.

The gentlemen will be seated. The Secretary announces the result as Ayes, 61; Noes, 66. The motion is lost.

The Secretary will read the next amendment, the amendment offered by Mr. Wickersham and agreed to by Mr. Hinman.

The Secretary — By Mr. Wickersham: On page 1, line 7, strike out the words "after sitting in joint session for the" and on page 2, line 1, strike out the words "discussion thereof" and insert in lieu thereof the following: "After consideration in joint session as hereinafter provided"; page 2, line 8, substitute a period for the semicolon and insert after such period the following words: "On the first Tuesday following the adoption by either House of the Legislature of any proposed amendment to the Constitution, the two Houses shall convene in joint session for the consideration thereof and thereafter the proposal shall be considered and acted upon by the Houses separately". On page 2, line 8, insert brackets before and after the word "and", and begin the new sentence with the word "if".

The President — All in favor of the motion to recommit with instructions to amend as read and report forthwith will say Aye, contrary No. The Ayes have it and the motion is agreed to. The Secretary will read the next amendment.

The Secretary — By Mr. Wickersham: To amend by striking out Section 5 on page 6.

The President — All in favor will say Aye, contrary No. The Ayes have it and the motion is agreed to. The Secretary will read the next amendment.

The Secretary — By Mr. Bernstein: On page 4, line 14, strike out the word "general" and insert the word "special".

The President — All in favor of that motion will say Aye, contrary No. The Noes have it and the amendment is lost. The Secretary will read the next amendment.

The Secretary — By Mr. Barnes: On page 3, line 12, place the bracket before the word "of" instead of "April"; page 3, line 13, strike out the word "December".

The President — All in favor of the motion will say Aye, contrary No. The Ayes have it and the motion is agreed to. The Secretary will read the next amendment.

The Secretary — By Mr. Doughty: Change the words quoted, "Shall there be a Convention to revise the Constitution and amend the same?" to read "Shall there be a Convention to revise and amend the Constitution?"

The President — All in favor of the motion to recommit with instructions to amend as read and report forthwith will say Aye, contrary No. The Ayes appear to have it. The Ayes have it, and the motion is agreed to. The Secretary will read the next amendment.

The Secretary — By Mr. Hinman: Page 5, line 12, correct the spelling of the word "thereon"; on the same page and line, strike out the comma after word "thereon". Page 5, line 18, strike out the comma after the word "thereon".

The President — All in favor of the motion to recommit with instructions to amend as read will say Aye, contrary No. The Ayes have it, and the motion is agreed to. That completes the amendments, and the bill will be laid aside for reprint.

Mr. Wickersham — I move that the Convention do now arise and take a recess until 2:30 p. m.

The President — It is moved that the Convention do now arise and take a recess until 2:30 p. m. All in favor say will Aye, contrary No. The motion is agreed to, and the Convention stands in recess until half past 2 this afternoon.

Whereupon, at 1:20 p. m., the Convention took a recess until 2:30 p. m., the same day.

AFTER RECESS — 2:30 P. M.

The President — The Convention will come to order.

Mr. Wickersham — Mr. President, I suggest the absence of a quorum and ask that the roll be called.

The President — The Secretary will call the roll.

Upon the call of the roll the following delegates responded: Messrs. Adams, Ahearn, Aiken, Allen, F. C., Angell, Austin, Baldwin, Bannister, Barnes, Barrett, Baumes, Bayes, Beach, Bell,

Berri, Betts, Blauvelt, Brackett, Brenner, Clearwater, Clinton, Cobb, Coles, Curran, Dahm, Dennis, Deyo, Dick, Donnelly, Donovan, Dooling, Doughty, Dunlap, Dunmore, Dykman, Eggleston, Eisner, Endres, Eppig, Fogarty, Foley, Franchot, Frank, Greff, Griffin, Haffen, Hale, Heaton, Hinman, Johnson, Jones, Kirby, Landreth, Latson, Law, Leary, Leggett, Lincoln, Linde, Lindsay, Low, McKinney, Marshall, Martin, F., Martin, L. M., Mathewson, Meigs, Mereness, Nicoll, D., Nixon, Nye, O'Brien, M. J., Olcott Ostrander, Owen, Parker, Parmenter, Parsons, Phillips, S. K., Potter, Reeves, Rhees, Rodenbeck, Rosch, Ryan, Ryder, Sanders, Sargent, Saxe, J. G., Schoonhut, Schurman, Sears, Sharpe, Smith, A. E., Smith, E. N., Stanchfield, Standart, Steinbrink, Stimson, Stowell, Tuck, Unger, Van Ness, Wadsworth, Wafer, Ward, Webber, C. A., Weed, Westwood, Whipple, White, C. J., Wickersham, Williams, Young, C. H., Young, F. L., President.

One hundred and ten delegates having answered to their names, a quorum of the Convention is present. The Secretary will read the title of the next order upon the calendar of third reading.

Mr. J. L. O'Brian — The Committee on Rules submits the following report:

The Secretary — Mr. O'Brian, from the Committee on Rules, submits the following resolution: Resolved, That the following matters be made special orders for conclusion following the present calendar of special orders, with debate limited as indicated.

Mr. J. L. O'Brian — The word "conclusion" should be "consideration".

The Secretary — General Orders No. 26, debate one hour; the delegate in charge of the bill, twenty minutes; other speakers, five minutes each. General Order No. 37, relating to laws restricting manufacturing in dwellings, debate one hour; the delegate in charge of the bill, fifteen minutes; other speakers, ten minutes each. General Order No. 53, occupational diseases, debate one hour; the delegate in charge of the bill, fifteen minutes; other speakers, ten minutes each. General Order No. 54, relating to inspection, debate one hour; delegate in charge of the bill, fifteen minutes; other speakers, ten minutes each; General Order No. 67, relating to rules of apportionment, debate two hours; delegate in charge of the bill, thirty minutes; other speakers, ten minutes each. General Order No. 63, Bill of Rights, debate three hours; the delegate in charge of the bill, one hour; other speakers, ten minutes each. General Order No. 36, delegation of powers in matters affecting employees, debate one hour; the delegate in charge, thirty minutes; other speakers, ten minutes each. General Order No. 55, relating to living wage, debate one hour; delegate in charge of the bill, thirty minutes;

other speakers, ten minutes. General Order No. 56, workmen's compensation, debate one hour; delegate in charge of the bill, twenty minutes; other speakers, ten minutes. General Order No. 40, relating to prison labor, debate half an hour; delegate in charge of the bill, fifteen minutes; other speakers, five minutes each. General Order No. 41, board of pardons, delegate in charge of the bill, twenty minutes; other speakers, ten minutes each. General Order No. 42, probation commission, debate one hour; delegate in charge of the bill, twenty minutes; other speakers, ten minutes.

Mr. J. L. O'Brian — Mr. President, I move the adoption of the resolution.

The President — All in favor of the resolution will say Aye, contrary No. The resolution is agreed to. The Secretary will read.

The Secretary —No. 145, General Order, by Mr. Marshall, to amend article 15 of the Constitution, with respect to the time when the Constitution is to go into effect.

The President — The proposed amendment is open to debate under the rule.

The President — Does any delegate desire to debate the proposed amendment? Debate is closed. The Secretary will read the text of the proposed amendment.

The Secretary — The delegates of the people of the State of New York in convention assembled do propose as follows: Section 1.

The President — The Secretary will call the roll upon the final passage of the proposed amendment.

Those who voted in the affirmative were: Messrs. Adams, Ahearn, Aiken, Allen, F. C., Angell, Austin, Baldwin, Bannister, Barnes, Barrett, Baumes, Bayes, Beach, Bell, Bernstein, Berri, Betts, Blauvelt, Brenner, Bunce, Byrne, Clearwater, Clinton, Cobb, Coles, Curran, Dahm, Dennis, Deyo, Dick, Donnelly, Donovan, Doughty, Dunlap, Dunmore, Dykman, Eggleston, Eisner, Endres, Fogarty, Foley, Ford, Frank, Griffin, Haffen, Hale, Heaton, Hinman, Johnson, Jones, Kirby, Landreth, Latson, Law, Leary, Leggett, Lennox, Lincoln, Linde, Lindsay, Low, McKinney, Marshall, Martin, F., Martin, L. M., Mathewson, Meigs, Mereness, Nicoll, C., Nicoll, D., Nixon, Nye, O'Brian, J. L., O'Brien, M. J., Olcott, Ostrander, Owen, Parker, Parmenter, Parsons, Phillips, S. K., Potter, Reeves, Rhees, Rodenbeck, Rosch, Ryan, Ryder, Sanders, Sargent, Saxe, J. G., Schoonhut, Schurman, Sears, Sharpe, Smith, A. E., Smith, E. N., Stanchfield, Standart, Steinbrink, Stimson, Stowell, Tierney, Unger, Vanderlyn, Van Ness, Wadsworth, Wafer, Ward, Webber, C. A., Weed, Westwood,

Whipple, White, C. J., Williams, Young, C. H., Young, F. L., President.

The President — 118 having voted in the affirmative and none in the negative, the proposed amendment having received the affirmative vote of all the delegates elected to the Convention, the amendment is declared adopted. The Chair lays before the Convention the report of the Committee on Revision containing the rearrangement of the proposed amendment relating to the Governor and Other State Officers, print No. 843. The question is upon agreeing to the report of the Committee.

Mr. Schurman — May I ask at this stage of the proceedings that the privilege of the floor be given to President Garfield of Williams College?

The President — Is there any objection? The Chair hears none and the privileges of the floor are extended to the President of Williams College.

Mr. Marshall — I would like the privileges of the floor for the Hon. Samson Lockwood, one of the commission which prepared for us the materials with which we have been enabled to work in this Convention.

The President — Is there any objection? The Chair hears none. The privileges of the floor are granted.

Mr. Griffin — I was unable to get here in time to serve notice in the usual order, and I ask unanimous consent to give that notice now.

The President — Is there any objection? Without objection consent is granted to the giving of a notice by Mr. Griffin. The Secretary will read the notice.

The Secretary — By Mr. Griffin: Notice is hereby given that he will move to-morrow in the regular order to discharge the Civil Service Committee from further consideration of introductory No. 29, print No. 29.

The President — The question is upon agreeing to the report of the Committee on Revision. All in favor of agreeing to the report will say Aye, contrary No. The report is agreed to. The Convention will go into Committee of the Whole for consideration of the special order of the day. Will Mr. Hinman take the Chair?

(Mr. Hinman takes the Chair.)

The Chairman — The Convention is in Committee of the Whole for the consideration of Special Order No. 65. The Secretary will read.

The Secretary — No. 822, General Order 65, by the Committee on County, Town and Village Government. To amend Article 3 and Article 10 of the Constitution in relation to changes

in the form of county government, and to the powers and duties of certain county, town and village officers.

Mr. J. L. O'Brian — Mr. Chairman, there being a limitation of one hour on the debate of this measure, I ask the privilege of making my brief statement without interruption. This bill is reported by the unanimous vote of the Committee on County Government, and is, in their opinion, a conservative step in advance of existing conditions. The bill does not fully meet the demands of various people of radical views, who are not satisfied with existing county government, but it does proceed along the line of development which has been followed in the past in respect to county government in this State. The proposition which was presented to the Committee on County Government was how to provide for the most populous counties in the State a better system of administration, and at the same time not disturb the great bulk of the counties, which desire no change. The chief difficulty, the chief fault which is found with county government in the largest counties of the State is that the county government does not work well in its administrative features. While with the legislative features of it there has been some fault, yet on the administrative side there has been a great deal of fault found. Now, this measure before us does not disturb the so-called constitutional officers, that is to say, the district attorney, sheriff, county clerk, or the judiciary. It does not affect the supervisor as a town officer; it does not seek to provide any iron-clad plan or plans for a different form of government. It simply aims to confer upon the Legislature power to work out for counties some plans or plan for government which shall not be arbitrarily imposed upon the counties, but which shall be imposed on counties only in case the electorate vote to accept such plan of government. In the larger counties of the State the condition has become quite intolerable. Such counties, for example, as Westchester, Erie, Schenectady, Nassau, have all complained. The three largest of those counties have, through their board of supervisors, filed resolutions with the Committee on County Government, asking for a change, and the present measure, so far as I am aware, which was voted for by the unanimous vote of the committee, has not received any opposition generally throughout the State. This measure in the first section does not attempt to provide any set form of government for counties nor does it even go as far as to say what the Legislature shall do in remedying existing conditions. It simply empowers the Legislature, in its discretion, to provide different forms of government from the form of government now in existence, and provide that, if the Legislature does enact such general form or forms of government, it shall not

become binding in any county until approved by the electors. The method by which the Legislature is to act is to be by general law, and the bill in the first section contains a provision prohibiting the Legislature from interfering by special law with internal affairs of counties without the request of the governing body of the county. The second section of this bill relates to a different matter. The second section, that is to say, Section 27, on page 2, empowers the Legislature to confer upon governing bodies as well as upon Boards of Supervisors administrative and legislative powers. It also provides that the Legislature may confer upon any county officer or officers any of the powers or duties exercised at the present time by town officers in respect to highways, public safety and the care of the poor. This bill in no particular intends to affect the question of the powers of taxation, it tends to disturb no functions of taxation as now exercised in towns or counties, makes no change in the financial administration, beyond providing, as I have said, that the Legislature may in its discretion enact general forms of government, different from the present forms of government. The policy of the State with respect to county government has been, since the adoption of the Constitution of 1821, to entrust county government entirely to the Legislature, on the theory that the county as an entity merely acts as the agent of the State in performing certain general State functions. At the time the last Constitution was adopted, following this historical precedent, the Convention conferred upon the Board of Supervisors, which was at that time the only governing body and is to-day the only governing body, a very wise grant. The Constitution provided that the Legislature might confer any powers of legislation and administration upon that governing body which it saw fit. The problem to-day is simply this: In the largest counties the Boards of Supervisors are too large. In Erie county, for example, there are 54 supervisors. They have been called upon with the passage of law after law to exercise many administrative and executive functions as well as legislative functions. For example, in Erie county, the one with which I am most familiar, the Board of Supervisors elects eleven administrative officials of the county. The idea which underlies this bill is that following the precedent set by the former Constitution, we shall permit the Legislature to modify, in counties which desire, the size of the governing body of the county, and shall empower the Legislature, if it sees fit, following the old precedent, to confer upon those governing bodies such administrative and legislative powers as it sees fit. The reason for granting special permission to the Legislature to confer upon certain county officers certain powers with respect

to the poor, with respect to public safety and with respect to highways, is because, as to those matters, it was the consensus of opinion in the Committee that it was possible that more efficient administration might come to the county officials rather than the town officials. But even on that particular this Proposed Amendment is not mandatory. It simply authorizes the Legislature in its discretion to make such transfer of power. The amendment to Section 2 of Article X which has been made, on the last page of the bill, is intended simply and solely to make effective the power of the Legislature to accomplish this transfer of power as to these three separate functions of the government. Mr. Chairman, if there is no objection, I move that we first consider Section 26 of the measure.

Mr. Lindsay — I would like to ask the Chairman this question: Suppose that a county desires the board of supervisors to appoint a board of commissioners or other bodies for governing: how are they going to do it under lines 5, 6, and 7, on page 2, which places the initiative for any such matter upon the board itself?

Mr. J. L. O'Brian — Mr. Chairman, the only way in which that can be accomplished is by the Legislature passing general laws the privileges of which are made available to all counties within the State alike. That is what the first part of the bill means in the following italicized matter: "Provided, however, that the Legislature, by general laws, may establish different forms of government for counties not wholly included in a city, any such form of government to become effective in any county only when approved by the electors thereof, in such manner as the Legislature may prescribe."

Mr. Bernstein — Will the gentleman yield for a question? I would like to know whether the word "government" in the first line of page 2 of your proposal may not lead to the inference that there is included in that term the constitutional offices of sheriff, county clerk, register and so on, and would you not prefer to change it to "governing bodies"?

Mr. J. L. O'Brian — Mr. Chairman, the Committee entertains no doubt on that subject and believed the word "government" carried no such implication with it, and it is to be assumed further that inasmuch as this is merely a permissive act, that the Legislature would have that in mind in enacting any other general form of government.

Mr. Law — I desire to speak briefly on this measure with regard to the need for its passage more particularly than on the provisions of the bill itself, as to whether they are the wisest that could be provided or not. The problems of government of

cities in this State are practically the same whether those cities are large or small. They all have to provide for light, water, disposal of waste, street paving, police and fire protection, and other things of that character. But, notwithstanding that all city problems are, in their essence, the same, the cities of this State have been here and demandd th right to make their own city charters, and this Convention has given at least some measure of home rule to the cities of the State. What I desire to bring to your attention particularly is that the problems that confront the governing body or officers of the county are more perplexing and more diverse than any problems that come before a city government. They of course do not involve such large sums of money, they do not affect the welfare of such large bodies of people, but in varying character and inherent difficulty they surpass the problems presented to city officials. Now, permit me to call to your minds a few facts relating to the different counties of the State and the difference in their situation and condition which we find, as for instance, area. We have the county of St. Lawrence, with an area of 2,880 square miles, and then the county of Richmond, with 59. As to population, we find the county of Erie with 528,985 and the county of Hamilton with 4,373. Then another element that enters into the problem is the density of population. Under that head we find in Westchester county 585 persons to the square mile, and in the county of Hamilton 2 people to the square mile. Sixteen counties of the State had a population of 100 or more to the square mile, and 41 less than that number. But even a more important consideration is in the counties that have some of the large cities, and the question of importance is the distribution of population as between the city and the rest of the county. The most exaggerated example of that is the county of Schenectady. There 90 per cent. of the total population of the county resides within the city, and in the village of Scotia across the river and the outlying districts 94 per cent. of the entire population of the city reside within three miles of the city hall; and in the county of Erie 80 per cent. of the population is in the city of Buffalo. In the county of Monroe 70 per cent. is in the city. Those facts alone bring forth serious questions that are not found in the purely rural and agricultural counties. Then, as to the valuations. Now, I appreciate fully that assessed valuation is not an accurate measure of wealth, and yet perhaps it is the best measure we have. In the county of Nassau, the assessed valuation per capita is $1,901; in the county of Ulster, at the other end of the line, the assessed valuation per capita is $400; the average for the whole State being $805. Then as to expenses of government. The county of Hamilton

leads the list with $23.21 per capita, and the county of Yates, at the other end of the list, $2.79 per capita. Then, another element that in some counties enters pretty largely into the question is State-owned lands, forest lands owned by the State. That is a very live question in the counties of Essex and Franklin and Fulton and some others. Then, there is another element, the element of transportation routes, as in the county of Montgomery, with two, six through line railroads, the New York Central, a four-track road, and the West Shore, a two-track road, and the Barge Canal running the entire length of the county, and that in itself raises a particular question for the county or counties of the same class. To meet the needs of government and administration in these counties, our so-called County Law was enacted. That law is perhaps as wise a measure as could be devised to meet the average county in the State and its needs, but it is easy to see that the wisdom of man is insufficient to frame any measure that would be adequate to meet the needs of all these counties. Now, what has been done? To meet the extraordinary needs of counties, conditions which would arise here, and which would arise there, different in their nature, two methods have been adopted. One has been to come here to Albany for special bills, and I don't think there is a single county in the State but what has amended, you might say, the County Law, or supplemented the County Law by special bills; and then another element, that may not be thought of by so many is the fact that in every county in the State certain local customs have grown up which are not sanctioned by the law and which in some cases are contrary to the law. These customs, by local usage, have grown into the authority of law so far as that county is concerned. So the result is that in 57 counties of the State, we have practically 57 kinds of county law. Now, that brings me to the point that we need some way by which the counties can adjust the county law to their own needs, and it seems to me, without going into details at all, that Mr. O'Brian's proposal would fill that need.

Mr. Barrett — I think that this Proposed Amendment has been so accurately described by the Chairman of the Committee that nothing more need be said in general about the purpose of except this: that it gives an opportunity to counties who, or which, have outgrown the procedure provided for them, to obtain or establish a procedure better fitted to their needs, and it gives those same counties an opportunity to take over as county matters functions which can better be handled as county matters than are handled as town matters at present. Continuing the subject that Mr. Law referred to, it might be of interest to us that since the County Law was established in 1892, and I agree with him that

that was a pretty fair law, applying to all counties generally — since that time there have been over 1,200 special county acts passed relating to counties, which does not include laws applying to New York county, or the counties now in the city of New York after the consolidation.

The Chairman — Will the gentleman wait a moment? Will the Committee kindly be in better order so that we may hear what is being said in reference to this matter?

Mr. Barrett — The Chairman of the Committee referred generally to larger counties; and along that same line it may be of interest to know that since 1892, when the County Law was passed, of the 1,200 special acts applying to counties, the larger counties had as follows: Albany county, 70 special acts; Erie, 106; Monroe, 64; Oneida, 56; Westchester, 100; Onondaga, 56; and Nassau, which, of course, was of recent creation, 47. Now, I do not purpose to take up the time of the Committee to any great extent, except I simply want to give one or two illustrations which I think will show better than general discussion the purpose and necessity for this proposition. While I do not expect the Constitutional Convention to make a provision for a single county, I want to give a few illustrations from the county of Westchester, and so I believe that the counties not so large, but growing toward that direction, will find the same trouble the county of Westchester has now. The county of Westchester has an assessed valuation of $400,000,000. It has four cities, 23 villages and 19 towns. The assessed valuation is divided about half and half between the towns and between the cities and towns. There has been some reference made to the matters in the discussion of the subject, so I don't need to go over it, but what I want to say is this: outside of the villages or cities, there are ten townships with an assessed valuation of over ten million, and there are six townships that maintained their own police force. Reference has been made, and I want to touch on it briefly, to the fact that there is no actual administrative head of a county. We have the board of supervisors, consisting of thirty-eight men, and a chairman to preside. Their budget is a million and a half dollars a year, but they have nobody, or no head officer to act as a constructive officer or to form a constructive policy. I think the fact that there is no actual head, no administrative head of the county, is sufficient to justify a provision like the first proposition, so that a county may select a form of government under which they can have an actual head if they find it necessary. I have just a couple of illustrations in regard to the second paragraph wherein it is provided that there may be transferred to county officers functions heretofore exercised by town officers, if necessary. On that, I want to give you an illustration of the care

of the poor in our county, under the general poor law. There are two overseers of the poor in each town, who commit delinquent and indigent children. There are in each town four justices of the peace who may also commit, so that you have six officers in each town who may commit such children to the poorhouse, and if the poorhouse fails to receive those children, they may be sent back and may be committed by some other one of the officers that I have named. That, and the preservation of the peace, I think, could be much better handled on a county basis than on a town basis. Now, I simply want to report to you how this matter was taken up in the county of Westchester, and some little time ago a commission was appointed to make a study of this proposition and they made a report to the board of supervisors, and the board of supervisors adopted these four brief paragraphs as embodying the views of the people in the county of Westchester. First, that the Legislature should be required by the Constitution to provide optional plans of county government, any one of which any county may adopt by a vote of the people. Second, the Legislature shall in such plans confer upon the board of supervisors or other governing body in such county such powers of local legislation as the Legislature may deem expedient. Third, that the Constitution should require that no such plan of government should be imposed on any county until approved by the electors thereof, and that no amendment to any plan of government should affect any county which has previously adopted such plan unless such amendment is accepted by such county, or unless such amendment relates to some State function.

Fourth, that the Constitution should require that all laws relating to the government of counties should be general both in terms and in effect except that special or local laws relating to such government may be passed, but shall take effect only on approval of the county affected. I only want to say this in addition to that, that this commission was a bi-partisan commission, made up of four Republicans and three Democrats, upon which were three mayors of the cities, and people who had made a study of the county government proposition. I think this amendment is safe and workable, and I hope it will prevail.

Mr. Lindsay — I think we had better look at this amendment rather carefully before passing it. To my mind, it contains something that is about as dangerous as anything we have attempted to put into the Constitution. Take lines 5, 6, and 7 on page 2, and they absolutely prohibit the Legislature from passing any act or provision for that county which is not asked for by the board of supervisors. In other words, if you had a corrupt board of supervisors or an expensive board of supervisors, although any county desired that some law curbing these expenses should be passed, or

regulating them, you cannot get the Legislature to enact any such law whatever. No matter what is being done by the board of supervisors, nothing could be done about it, because the request would have to come from the board of supervisors, and they are the persons to whom the legislation would be directed. Now, it strikes me we don't want any proposition of that sort in this bill. For example, supposing I wanted to change the legislation of a county from a Board of Supervisors to some other organization. Do you suppose the board would pass such a law? Could you get such a special law as that, without the consent of the Board of Supervisors? Suppose any other matter in which the Board of Supervisors was interested, was desired by every citizen in the county. He could not get such an act in the Legislature without the request of the vote of the board. It makes them the absolute arbiters of all the legislation, all the affairs of the county, and you cannot — neither the Legislature can act nor can the people themselves initiate anything without the consent of the supervisors. I therefore move an amendment striking out lines 5, 6, and 7. I do not believe it is a good thing for it, because a county is very different from a city, and this sort of home rule is necessary to be vested not in the counties and citizens of the county, but in the Board of Supervisors.

The Chairman — Mr. Lindsay offers an amendment which the Secretary will read.

The Secretary — By Mr. Lindsay. Amend by striking out lines 5, 6, and 7 on page 2.

Mr. Coles — Mr. Chairman, reference has already been made to the county of Nassau. The counties of Westchester and Nassau are unique in the counties of the State, because they adjoin the great city of New York. In a measure they resemble perhaps the county of Erie and the county of Monroe, which contain two great cities, but they are quite different even from those counties. The county of Nassau recently created occupies a territory of 293 square miles and has within its confines 15 villages, and along the south portion of the county adjoining the ocean those villages are almost continuous. It contains a large population which goes from the city into the country and returns again by means of quick transportation. It has grown within the past 15 years, or since its creation, from a population of about 55,000 to upwards of 107,000 persons. Because of the fact of its nearness to the city, because of the fact that it is no longer an agricultural or rural county of the State, the system of government which we have inherited does not fit the conditions which now prevail in the county, and we have found the necessity of making some change in its present form of government, so much so that at the session of the Legislature

before the last a bill was introduced looking for a change of government in Nassau county providing for the creation of a Commission to examine into the present form of government and to suggest means of remedying the evils which now exist. That Commission has had a number of sessions and is very desirous of recommending a change in the form of government which we quite favor. The representative from Westchester has told you of the conditions that prevail in that county concerning the various villages and cities contained within it. The exercise of the police powers in those densely populated sections. He has spoken to you of the enforcement of law in so far as it regards the poor, also public health. How we need in the county of Nassau some changes along these directions and we find it impossible with the provisions of our present Constitution to make these desired changes. The county of Nassau, although dense in population, small in territory, consists of three towns, and under our present form of government, we consequently have three members of the Board of Supervisors and for that reason two members of that board may at any time legislate for the county, and these three members, as stated by Mr. Lindsay, will not be likely to advocate any change in the form of government, which change may affect their tenure of office or emoluments which they receive in that office. In that little county of Nassau the Board of Supervisors receives, by way of fees, from $35,000 to $40,000 a year, and as I have said to you before, our justices of the peace and our constables receive fees running well up into many thousands of dollars. I am fearful of the fact that our board of supervisors and the boards of supervisors perhaps of many other counties might not be willing to suggest or to accept possibly any change in the present form of government which would affect them in their tenure of office or in their salary in any way whatever. For that reason, I propose to offer an amendment to take the places of lines 5, 6 and 7 on page 2, which is framed somewhat after the amendment proposed by the Cities Committee so that legislation may be passed even though the board of supervisors may be adverse to it. I offer the amendment and ask the Clerk to read the same.

The Chairman — Mr. Coles offers the following amendment which the Clerk will read.

The Secretary — By Mr. Coles: Strike out lines 5, 6 and 7 and insert in lieu of the same, the following: "After any bill for local or special law relating to a county or counties has been passed by both branches of the Legislature, the house in which it originated shall immediately transmit a certified copy thereof to the governing body of the county or counties to be affected, and within fifteen days thereafter the governing body shall return said bill to the clerk

of the house from which it was sent; but if the session of the Legislature at which such bill was passed has terminated shall immediately transmit the same to the Governor with the certificate of the governing body thereon stating whether the county has or has not accepted the same. Whenever any such bill is accepted by such governing body it shall be subject, as are other bills, to the action of the Governor. Whenever during the session at which it was passed any such bill is returned without the acceptance of the county or counties to which it relates, or within such fifteen days is not returned, it may nevertheless again be passed by both branches of the Legislature and it shall then be subject, as are other bills, to the action of the Governor. In every special county law which has been accepted by the county or counties to which it relates, the title shall be followed by the words 'accepted by the county', or 'counties', as the case may be; in every other such law which is passed without such acceptance, by the words 'passed without the acceptance of the county', or 'counties', as the case may be."

Mr. Low — In behalf of the county of Westchester, I want to urge upon this Convention the acceptance of so much of this bill as relates to giving the Legislature authority to frame alternate forms of county government, which will go into effect after acceptance by the people. The population of Westchester county in 1910, according to the federal census, was 283,000. No doubt by this time it has a population far in excess of 300,000. The Convention will perceive that that is a population larger than that of any city in the State outside of New York and Buffalo, and I think it must be evident that a form of government suitable for the administration of affairs in a rural county is an entire misfit when applied to such big counties. Of course, the people of Westchester have no wish whatever to embarrass other counties which are suitably cared for by the general county law, but they do feel that they have the right to ask this Convention to make it possible to secure in the manner indicated in this article the form of government really adapted to their needs. It is a perfectly safe proposal, I think, because the initiative is taken by the Legislature and it has to be submitted to the people before it goes into effect. In regard to the question involved in lines 5, 6 and 7, I have no particular interest one way or another. I have no particular experience, except that my general feeling is that the suggestions made by Mr. Coles in theory and in principle are just as applicable to counties as they are to cities, where special laws are passed.

Mr. M. Saxe — I ask unanimous consent at this time to move that the privileges of the floor be extended to the Hon. Job E. Hedges of New York.

The Chairman — Is there objection to extending the privileges of the floor to Mr. Job E. Hedges? The Chair hears none and it is so ordered.

Mr. L. M. Martin — The Committee on County, Town and Village Government endeavored to harmonize, as far as possible, the conditions that we found. In the sixty-one counties of the State the agitation as to finding fault with board of supervisors is probably confined to six. The rest of our counties seem to be satisfied with the existing county conditions. With relation to the amendments offered by Mr. Lindsay and Mr. Coles, we have endeavored to create a situation that we think applies to the conditions that exist so that it will not be necessary for Mr. Lindsay to be fearful of his board of supervisors. In our judgment, any county that is finding fault with its board of supervisors can, by the following out of the general law which necessarily will have to be passed, create a new governing body. If such new county body is created, that governing body should be protected in the matter of the passage of special laws affecting their county without their consent; that is, the consent of the body should be obtained, we claim, before special laws can be enacted affecting the county at large. The provision that we have placed before the Committee of the Whole would allow a commission form of government under a general law; would allow a government which would be adapted for the larger counties, namely, a county manager, and a board of supervisors simply for legislative purposes, or would allow the creation, as they have practically done in some of the counties, of a board of supervisors with three members. This could all be provided for by general statute and by the election of the people they could adopt that form of county government. If they do adopt that form of county government we say that the amendment of Mr. Lindsay or the amendment of Mr. Coles hardly should be allowed to become a part of the organic law. While Mr. Lindsay's county is perhaps suffering from ill-advised conditions as to its board of supervisors, we say that can be remedied now, by the provisions in this bill. What can we do, gentlemen, for those counties that are suffering from vicious legislation passed by the Legislature and saddled onto the counties without the consent of the counties through any organized body? That is the condition that exists in the greater part of this State. As a member for three years of the Committee on Internal Affairs of this House, I was perfectly astonished at the great number of private bills coming into this House, brought in here by special interests, by special men, from different counties of the State of New York, that were passed against the wishes of the people of the county themselves, without any sanction of

any county authority, without any sanction from any governing body, without the consent of the board of supervisors. It is special legislation of the most vicious kind. Take my own county. Within ten years against the protests of the supervisors, and in four instances without the consent of the governing body of the county of Oneida, — they created a court house commission down here by special legislation and the next thing we knew a commission of seven men started to build and did build a million dollar court house and then mandamused the board of supervisors to compel them to issue bonds to pay the bill. That case went up to the Court of Appeals and was sustained. They came down here and by special legislation enacted a statute whereby appeals from the city of Utica should be taken against the country towns on the question of assessment and it cost the town of Oneida, under special legislation, $70,000 before they finished the litigation. They came down here and created a comptroller's office which is costing the county between $7,000 and $8,000 a year and gave the comptroller no power to audit except a mere power to recommend to the board of supervisors. They created a probation officer's department. I am not saying it is not a good department, but it should have been requested by the people of the county. They increased the salaries of some of the officers by special legislation. This year they created a body of seven men, appointed by the county judge, to ride through the county of Oneida and attempt to equalize values between the farming districts and the cities of Utica and Rome. That is purely an experiment, passed while the court was trying to fathom some way to obtain a proper equalization in the county. It is put upon the county without the consent of the governing body. I say that these counties, if they elect a governing body that is not a proper body, should be allowed to take advantage of this constitutional amendment and to create a new body. What I do say, what I earnestly ask this Committee to sustain, is that you put in the fundamental laws of this State a simple and plain provision — if this language does not suit you, use other language — so that the Legislature of the State of New York cannot pass special legislation putting expense on these counties and charging it up to boards of supervisors or other governing bodies of the State and hold them responsible for it when they are not responsible for the act itself. It is the simplest proposition of home rule that has been brought before this Convention since we have been in session. I asked the delegates to give it consideration. In five-sixths of the counties of this State the boards of supervisors are perfectly satisfactory and they say that they are decreasing expense, decreasing conditions that they ought

to stop and still you come to the Legislature and create conditions that they cannot stop. I say that the position of the Committee as to this provision, above all others should be sustained. I would like to help out Mr. Lindsay. If they have a bad board of supervisors in Niagara county, they can either select new supervisors or they can create a commission form of government under this bill and then let the governing body of Niagara county or Oneida county or any other county say to the Legislature what legislation they prefer to have enacted and placed in the statutes.

Mr. Stimson — It seems to me that this is one of the most important measures that has been before the Convention, as to the provisions contained in the amendment to Section 26. It seems to me that that establishes a principle which goes far beyond the question of fair relief to Westchester county or Nassau county, and seeks to establish and make sure the perpetuation of vigor in our local government in different parts of the State, which is a very necessary part of the reform which this Convention is trying to accomplish. I see no way in which that reform can be accomplished except by giving to the different localities of the State a certain amount of freedom in the choice of the forms of government which they shall establish in those localities, in other words, by establishing somewhat the system which this first section seeks to establish. We have been seeking in the measures which have been before the Convention to establish a responsible form of government in the State of New York. But it has as a necessary corollary to that that the practice of self-government shall be kept alive in its fullest vigor in the various subdivisions of the State. It is in the government of those subdivisions that the citizen must learn the practice of a free, self-governing community. I know in the counties with which I am most familiar, the two counties of Nassau and Suffolk on Long Island, the present provisions of the Constitution operate as very serious shackles upon that indispensable school of self-government. I see no other way in which relief can be accomplished than by making it possible to develop in our rural localities, in the same way as we have been developing in our cities, the lessons in the art and practice of self-government, so that we may develop gradually and improve methods and conditions and learn the practice of forms which have run the risk of becoming obsolete. Conditions are so different in various sections of the State that no single system will be found satisfactory to every community. It is one of the privileges in our county government, just as it is one of the privileges of living in a great nation composed of 48 States, to have in that way the benefit of the experience of the

different localities where the different experiments are being tried out, and I sincerely hope that the form provided in general by the first provision of this amendment will be adopted.

Mr. Lincoln — Mr. Chairman, I trust the amendment offered by Mr. Lindsay will not be adopted. We, upon the Committee on County Government feel that the provisions contained in lines 5, 6 and 7, prohibiting local or special laws, are very, very important; but one amendment to that paragraph is necessary in order to take out of the provisions of the paragraph the counties included within the city of New York; and for that purpose I propose to add after the word "counties" on line 5 the following: "Except to a county or counties wholly included within a city", and I send that amendment to the desk.

Mr. J. L. O'Brian — There is no objection on the part of the Committee to that amendment.

The Chairman — Mr. Lincoln sends an amendment to the desk which the Secretary will read.

The Secretary — By Mr. Lincoln. On page 2, line 5, after the word "counties" add "except to a county or counties wholly included within a city."

Mr. Kirby — The provision to give to each county in the State the right to select such form of government it may desire, with that provision I have no quarrel, but as has been said here repeatedly conditions which exist in Westchester county and Nassau county are not applicable to what may be termed strictly rural counties of the State, and to this provision here which states, "No local or special law relating to a county or counties shall be enacted except upon request by resolution of the governing body of the county or counties to be affected", I am unalterably opposed. To shackle the hands of the Legislature in any such manner as this would be wrong. The amendment which has been offered here by Mr. Lindsay, that amendment is initiated entirely as a matter of principle, and is to meet local conditions which arise, so far as that is concerned, in the matter of local boards of supervisors discharging their duties, as has been intimated by the remarks of certain gentlemen here. In my opinion, this ought to be approved. If the board of supervisors in any county oppose a piece of special legislation that is vicious in its character and opposed to the best interest of the county, no Legislature will refuse to listen to the honest protests of the board of supervisors, and no chief executive will fail to heed that protest. At all times the boards of supervisors have ample opportunity to protest. But here is the proposition that for twenty years we shall tie the hands of the Legislature so that no local or special law

relating to a county shall be passed, unless it receives the endorsement of a board of supervisors, no matter what character that board of supervisors may be. I tell you, Mr. Chairman, that is a dangerous experiment, and some of us who live in the country, some of us unsophisticated countrymen now and then have discovered that rings have existed in boards of supervisors, who at times are absolutely opposed to the passage of special legislation which would destroy some of the prerogatives and foreclose the pernicious practices in which they sometimes indulged. I hope that the amendment offered by Mr. Lindsay will prevail, believing that it is in the interest of fair and decent treatment of the people of the county.

Mr. L. M. Martin — Do you know that this provision provides that the board of supervisors may be done away with?

Mr. Kirby — Yes, it does. No doubt about that. We don't care to do away with the board of supervisors as an institution. In the average rural county they want to retain them. We want to have the right to have the Legislature exercise some control and some power over them at times when it is necessary to exercise it.

Mr. L. M. Martin — If they are guilty of such vicious and pernicious practices as you say, if they are continued, don't you anticipate that they will be done away with?

Mr. Kirby — No matter what I anticipate, I have devoted some of the most strenuous energies of my life, not only to get rid of them but to place some of them where they belong.

Mr. Sanders — I offer the following amendment.

The Secretary — By Mr. Sanders. On page 3, lines 6, 7, 8 and 9, strike out the words "The legislature shall designate for that purpose. Subject, however, to the general provisions of sections 26 and 27 of article 3 of this constitution", and insert in place thereof the following: "Shall be provided by law." On page 3, line 12, strike out the words "the legislature may direct", and insert in place thereof the following: "may be provided by law".

Mr. Sanders — Mr. Chairman, the purpose of the amendment which I have offered is to do away with an inconsistency which now exists between the amendment proposed by the Committee on County, Town and Village Government, and the Cities Article, which is now on the calendar of third reading. The Cities Article delegates to cities the exclusive power, among others, to regulate the powers, duties, qualifications, mode of selection, number, terms of office, and method of removal of city officers and employees. The amendment proposed by the County Government Committee retains the language which now exists in Section

two of Article ten of the Constitution which says that "All city, town and village officers whose election or appointment is not provided for by this Constitution, shall be elected by the electors of such cities, towns and villages or of some division thereof or appointed by such authorities thereof as the Legislature shall designate for such purpose." Now, in the amendment reported by the Committee they have added a clause for the purpose of avoiding an inconsistency with Sections 26 and 27 of Article III of the Constitution which they propose to amend. The words which I propose to substitute for the language which I propose to strike out not only avoids the inconsistency with the Cities Article but also avoids the inconsistency with the amendment to the two sections of Article III, which the Committee has proposed. The language which I propose is "shall be provided by law". The law of course includes other provisions of the Constitution, statutory provisions and provisions of law which may be enacted by cities pursuant to the provisions of Section 3 of the new Cities Article. I think that the Committee is willing to accept the amendment which I have proposed.

Mr. Low — The Committee has no objection to that amendment.

Mr. F. L. Young — Mr. Chairman, I have no doubt that some of the provisions of this bill are rather shocking to those of the delegates who are given to conservative thinking. I have no doubt of that. My conservatism is just as strong as that of Delegate Kirby or any other delegate, and I admit that when this proposition was first submitted to the Committee of County, Town and Village Government I felt that it was too much of a departure from established custom, but I remained with the Committee long enough to become convinced by argument and not by feeling that the Committee was working in the right line and for that reason I am going to support this bill from beginning to end, with the amendments, some of them that have been proposed. It is no argument in favor of a bill to say that the Committee have been considering this matter faithfully for a long time and has agreed upon a report. I say it is not a conclusive argument and yet it is an argument that has been advanced on this floor from the very beginning of the filing of the Committee's reports. But that fact ought, however, to cause the delegates of this Convention to be a bit reluctant about offering motions for amendment on the spur of the moment. I doubt very much whether any delegate to this Convention can on the spur of the moment, from a very casual examination of the Proposed Amendment make a really sound and valid proposition of amendment, I doubt that very much. The Committee has considered this bill and has tried

to adapt the bill to the circumstances as they were shown to the Committee. Whether they have failed or not rests upon the judgment of the Committee. Now, I have no fear of lines 5, 6 and 7 of this Proposed Amendment on page 2. I have not the slightest fear of it, and I will tell you why. At first these lines seemed to me to be setting up something in opposition to the Legislature, which my political reading has taught me to be not wholly acceptable, but I have dismissed it, and I have dismissed it entirely for this reason: If there is any real need of reform, of amendment, if a situation is bad enough, with a new Board of Supervisors every two years, the people have an opportunity to get square with the supervisors who refuse to obey their voice. Now, what is the reason why these lines are in this amendment? The reason that was stated by Mr. Martin and some of the other delegates. I know from my experience in the Legislature that frequently it has happened that laws have been sent down for the counties which were really not desired by the counties. Indeed, I confess that at some of the hearings on these special bills as they came up before the Committee, arguments have been made, but no heed was paid to anything that was said about the bill except by the member or representative, whichever he might be, who represented that district and so these bills have been sent down to the county with that sanction. That is just the situation we are trying to meet and I think we have met it by lines 5, 6 and 7.

It has already been pointed out that there is no real difference between city and county government except the extent of territory. It is one body and needs one law. If we are not going to give this relief to the counties which they ask for we will have reduplication of what Mr. Barrett said, and I remember distinctly many times Mr. Brackett in the Senate saying "here is another bill from Westchester" or some friendly remark about it, he was always friendly about it, because we never asked anything unreasonable. We want to stop this special legislation. There must be invested in the county the power to take care of itself without coming here and that is what the committee is trying to do. I believe it has succeeded and I believe the bill has real merit and that it would be tried. The counties that do not want to change their government ought not to be unduly apprehensive over this bill. There is no intention here to change them. There is no intention to interfere with the boards of supervisors of counties which are perfectly satisfied, but only among the counties which are not satisfied where the government has not been what the county really wanted. Here is opportunity for relief and that is all we ask you to do. At one time in my life I was pretty well

wedded to the idea that a law good enough for one county was good enough for any county of the State and that there was no need for a different government for Westchester county or for Herkimer county, for Clinton, or any other county, but I have abandoned that idea; I have wholly surrendered it, and I am advancing to the thought that the less number of municipalities that we have the greater benefit will come to the people. My thought is not embodied in this bill; but, for instance, I have for a long time felt that matters of education in a county may better be committed to a county board of education; that matters of health in the county could better be committed to the county board of health, and so on down the line. This bill does not contemplate it. I merely speak of that as an illustration of a tendency into which my experience leads me. Now, I have no fear of the next section. The question for us to decide as to the first section is this: In the next 20 years isn't it possible that some county or some counties may have a situation where the government of the county would better be administered by a different form of government than the board of supervisors. If you believe that is so, then it seems to me that there can be but one answer to it, and your support will be given to this bill and every delegate will understand that if he supports the bill nothing can be placed upon the county except by consent of the county itself. Whatever disposition is made of lines 5, 6 and 7, I care not, strike them out if you want to. The first paragraph is a paragraph that should be approved by every delegate in this Convention. Of that I have no question.

The Chairman — The time has expired for debate on this proposition. If there are any further amendments they must be presented at this time.

Mr. Wagner — I would like to give a few observations on this measure.

The Chairman — The Chair is not able to grant you any such opportunity, inasmuch as the time has expired. The Committee will have to rise.

Mr. Wagner — Are we going to be tied down to seconds in a matter as important as this? and that in Committee of the Whole? This should be discussed a little more fully. I have had very little to say. I would like to state some experience I have had as a legislator on this special provision for counties. If I am to be shut off, I will sit down.

The Chairman — The Chair would like to extend the time, but it is not within his jurisdiction to do so.

Mr. J. L. O'Brian — Mr. Chairman, there is certainly no desire on the part of those interested in this measure to curtail debate. I

do not know whether there are any members desiring to be heard on the next section or not.

Mr. R. B. Smith — Mr. Chairman, I certainly wish to be heard.

Mr. J. L. O'Brian — Mr. Chairman, I move that the Committee rise, report progress and ask leave to sit again on this measure, the vote to be taken at four-thirty, all future speeches to be five-minute speeches.

Mr. Wickersham — Mr. Chairman, may I call the attention of the gentleman and of the Committee to the fact that this is Wednesday. We have a very full schedule, which the Rules Committee has brought in, and the House has adopted a rule as to the remaining important measures, limiting the time of debate, and unless we adhere to those limits we certainly won't get through. I say that not with reference to any particular exigency here but to impress it upon the Committee.

Mr. J. L. O'Brian — Mr. Chairman, inasmuch as this is the first time the situation has presented itself, and one section of this bill has not been discussed, I think we run no risk in asking twenty minutes in which to consider the remainder of the bill. I therefore renew my motion.

The Chairman — Mr. O'Brian moves that the Committee do now rise, report progress and ask leave to sit again immediately on the consideration of this General Order No. 65; the final vote to be taken not later than four-thirty o'clock, and all speeches to be limited to five minutes. Those in favor of the motion will say Aye, opposed No. The motion is carried. (The President resumes the Chair.)

The President — The Convention will come to order.

Mr. Hinman — The Committee of the Whole begs leave to rise, report progress and ask leave to sit again for immediate consideration of General Order No. 65; to consider the same so that the vote will be taken not later than four-thirty, and all speeches be limited to five minutes each.

The President — The question is on granting leave asked by the Committee. All those in favor say Aye, contrary No. The Ayes have it and the leave is granted in accordance with the conditions specified. The Convention will return to the Committee of the Whole for consideration of the pending Special Order. Mr. Hinman will resume the Chair.

The Chairman — Does Mr. Wagner desire to be recognized?

Mr. Wagner — Mr. Chairman, I am not an expert on county legislation, but what Mr. Young said as to the experience of special legislation in Albany has been my experience, and I had the honor of being the leader of the Senate four years in the majority, and I know the great many demands that are made

from localities, where the party in power in Albany did not have absolute control of the local government, and thus, even with the risk of opposing the will and sentiment of the community, they had used legislative bodies to impose upon the locality legislation which that locality did not desire and opposed. In the last session — I think that we had some legislation affecting the city of Utica or the county of Oneida, which was opposed by Oneida county, but the Democrats were called upon to pass it at the request of some local Democratic representatives, and I think it was eventually passed, and I think it would be well if by some legislative enactment we prohibit all that kind of local legislation except either the request comes from the locality, or it has the approval of the locality, before it is initiated. In the last session of the Legislature what happened? Rensselaer county elected a Democratic board of supervisors, and there were some Republicans — there was a Republican — I am giving you this as an instance; I don't mean to accuse the Republican party, because the Democratic party has been just as offensive, but this is a practical illustration. The board of supervisors became Democratic. The county officials, who were Republican, wanted to appoint more officials for patronage's sake than the board of supervisors was willing to provide money for, contending that the places were useless and the expenditure of the money would amount to extravagance. What happened? Why, Rensselaer county came to the Legislature and asked to have three different acts, applying to three different county officials, and in the bill — you will see it if you will look in the Session Laws of this year — were enumerated the places which were to be appointed by this county official and the salary that each county official was to receive. Now, we from New York city, and from other sections of the State, fixed the places and the salaries of the placeholders for Rensselaer county, although we knew nothing about the locality, and I know it was done, according to the newspaper accounts, anyway, absolutely against the sentiment of that county. Now there is another thing. Frequently the Legislature is asked to create places for a county where the county leaders would want the places for patronage, and yet, at some subsequent time, if the political party in power there, or the board of supervisors, are charged with extravagance they say, "Why, we are not responsible for this extravagance. This was mandatory legislation forced upon us by the Albany Legislature, and we had no alternative; we had to expend this money at the direction of the State Legislature." Now, if you have a provision such as is here, the responsibility, in the first instance, is upon the locality, upon the governing body of the locality affected and they cannot escape the

responsibility for any extravagance in their government. The gentleman from Erie is so impatient that he almost annoys me, and I know he doesn't mean it.

Mr. J. L. O'Brian — Mr. Chairman, I rise to a question of privilege. I have betrayed no impatience. I have been sitting in my seat during all this conversation.

Mr. Wagner — He has been up and down at the conclusion of every one of my sentences. I don't mean to offend — if the gentleman thinks I meant to offend —

Mr. J. L. O'Brian — I think, on the other hand, I am very patient.

The Chairman — The gentleman's time has expired, and the Chair has noticed at least three other speakers who would like to take the balance of time.

Mr. Wagner — Very well.

Mr. Low — I wish to protest against Mr. Lincoln's amendment, exempting the counties of New York city from the general rule applying to all the counties of the State. I think we should have the same protection other counties have.

Mr. Parmenter — I want to say just a few words in behalf of the rural counties to which in my judgment the proposed amendment will be quite applicable. I have had the opportunity of fairly close observation of county conditions as a county official, and I have become more and more impressed with the truth of the remarks of Mr. Stimson and also Mr. Barrett, to the effect that the local units, as we may so call the counties, are becoming very weak and emasculated, largely from non-use of their proper functions. The truth of the matter is I don't think it is too much to say that we are coming to the parting of the ways in the matter of county government. More and more each year the State is assuming a paternal function; more and more the county is becoming purely an administrative agency of the State. Now, I don't wish to be put on record as a home-ruler for counties. I am frank in saying my experience has taught me that the average rural county; by which I mean, perhaps, a county of an assessed valuation of $50,000,000 to $75,000,000, and containing, perhaps, a city of the third class in its confines — is not yet fitted for home rule or anything approaching home rule in the sense that cities are asking for it; but I do most earnestly believe that the time has come when the apathy of the people in counties or in their own government should be changed, and that they should be taught some of the elements which go to make a strong and virile unit of the State, because, as I conceive it, the whole is as strong only as its component parts and it is largely from that point of view, knowing as I do full well the deficiencies to-day in county government, that I feel this bill should pass, I feel that it will give an

easement in that line and be a very distinct help in the future. Prior to 1905, when the municipal act went into effect, I doubt very much whether any members of this Convention realize the amount of gross irregularities that existed in the counties. I do not believe that exists to-day. In fact, I know it does not. But it is the fact that four or five years following the passage of that act, when the Comptroller's office took active management in the investigation of counties, a good many graves were filled with suicides, anticipating revelations, and prisons have held county officials and perhaps some are still there. To-day, however, a condition exists, purely the result of this faulty training, whereby the accounting methods and the methods and the conduct of business are exceedingly wasteful and exceedingly inefficient. Of that there can absolutely be no doubt. It is for that reason that I hope that this Convention may see fit to do that which I believe will be a step in the regeneration of counties, teaching them to be simply helpful units of the State.

Mr. Dunlap — I am in entire sympathy with the first part of this provision. I think lines, 5, 6 and 7, on page 2, may work to the disadvantage of counties. Now, I want to give you an illustration of just what this would have required a few years ago as applied to Montgomery county. The county clerk's office was not a salaried one, and the sheriff's office was not a salaried one. The expense of those officers was over thirty thousand dollars a year. The board of supervisors audited the bills, and it was commonly reported, whether it was true or not, that a good many members of the board of supervisors got a part of the rake-off. It came about that the people there insisted upon a change, making those two officers salaried officers. A bill was introduced in the Legislature here asking that those two officers be made salaried officers. The board of supervisors passed a resolution against it, protesting against the abolishment of these, or, making these two officers salaried officers. Not every man of the supervisors, however, voted for it, but a very large majority did, and they came down here and opposed the proposition before the Legislature. The bill was passed, and the officers became salaried officers. The county clerk's office, instead of costing nine or ten thousand dollars a year, actually paid the county something from the fees received. The sheriff's office was reduced from nearly $20,000 to $4,600 and it has been very much better. Now, with this provision where would we be? For two or three years they tried to get the supervisors to agree to making these officers salaried, and they would not consent, and held to it, until the law was actually passed by the Legislature over the protest of the board of supervisors. Now, suppose that that condition or some similar con-

dition exists in a county, with this provision in lines 5, 6 and 7? What remedy have the people got except possibly to elect new supervisors? But with such an arrangement as we had up there, it would be almost impossible, because here and there, if they nominated a new man, they would get hold of him, and he would be anxious to get on the sheriff's committee or on the county clerk's committee, and it would have as a result, as we had — you could not get it through the supervisors. It had not got to the mind of the people generally and they had no idea of the real condition; if they had they would rise up and beat them, but it is hard work to do that because they are backed by their political leaders, and the political organizations both Democratic and Republican, and the result is that they continue on the old line.

Mr. R. B. Smith — Mindful of the lapse of time, I wish to offer an amendment out of order, with unanimous consent, to Section 2, which has to do solely with language, and does not change the meaning of the section.

The Chairman — The Secretary will read the amendment.

The Secretary — Mr. R. B. Smith. On page 2, line 10, enclose the words "confer upon" in brackets, and after "upon" insert "delegate to". On the same page, line 12 enclose the word "further" in brackets. On the same page, line 12, after the word "and" insert "confer upon them such powers of". On the same page, line 19, after the word "any" insert "elected or appointed". On the same page, line 20, strike out the words "duly elected or appointed".

Mr. R. B. Smith — Mr. Chairman, the Legislature never confers legislative power upon anybody. It delegates legislative power and confers powers of administration. The language used in the cities article is "delegate to", when referring to legislative power. If we keep the words "confer upon" it immediately raises a question as to the difference or distinction. It should be uniform.

Mr. Marshall — Hasn't that language been in the Constitution ever since 1846?

Mr. R. B. Smith — It has.

Mr. Marshall — And hasn't it been interpreted by the Court of Appeals in a number of cases?

Mr. R. B. Smith — It has.

Mr. Marshall — Then why the necessity of making the change now after seventy years?

Mr. R. B. Smith — Then change the language of the cities article and make it "confer upon". I say the words "delegate to", when used with reference to legislative power, are correct. The words "confer upon" as used with reference to legislative

power are absolutely incorrect. The first two amendments are simply to clear up that ambiguity and make the language conform to the same as that expressed in the cities article. In lines 19 and 20, where the language is, " The legislature may confer upon any county officer or officers duly elected or appointed," infers a grant of power to individuals. I have struck out — purposely struck out the words " duly elected or appointed ", and insert in line 19 after " any ", the words " elected or appointed ", so that the line reads, " The legislature may confer upon any elected or appointed county officer or officers any of the powers and duties ", etc.

Mr. J. L. O'Brian — Mr. Chairman, I am not authorized on the part of the committee to accept the amendments of Mr. Smith, although personally some of them appeal to me. I think the committee seem to feel that Mr. Marshall's position is the correct one, and we should allow the language which has existed for so long to remain in the Constitution. There are only two minutes left, and I simply wish to say this on the subject of the whole bill. I sincerely trust that the lines 5, 6 and 7 will not be stricken from this measure. If you strike those from the measure, the whole measure is crippled. The theory of the bill is this: That the county government is an agency of the State; that there are only a few broad, general functions which counties exercise for the State. Those are embraced now, and ought to be embraced, in the general laws of the State. We cannot draw a provision that will fit one particular county as different from another. The interference which the people of the country have complained of from Albany, has been interference with the local agencies of government, such matters as imposing courthouse commissions and commissions of one sort or another on the community from Albany against the wish of the people. And another reason why this is vital to the bill is because in Section 27 we provide that the Legislature may confer upon the county officers certain powers with respect to highways, public safety and the care of the poor which are now exercised by town officers, and under the direction of people as a rule whose powers could not be transferred by general law. They would have to be transferred by special law and the special law would have to receive the sanction of the local legislative body. So that the lines 5, 6 and 7 are a vital part of this bill. They are vital in one other particular in that, if they are not left in the bill, then after the Legislature has enacted these different forms of government, the Legislature may come in and modify its terms as to each particular county and entirely destroy the benefit. While it is no argument, as some one says, to say that the committee likes its own bill, but the bill has

received a good deal of careful consideration. The members of the committee that considered it came from twelve or fourteen different counties of the State. We have heard many debates on the subject and we all of us feel that the State is amply protected and the argument, as I view it, by Mr. Lindsay is simply an argument against local self-government. They do not wish to trust their own legislative bodies to take care of special and local laws; and the bill as reported was reported unanimously by the committee, of which only two or three members came from the cities; two or three men only whom you might say were not very familiar with county districts.

Mr. Foley — I would like to ask the gentleman in view of the many amendments which have been offered here, and especially the question of the suspensory veto, whether it would not be better procedure to take this bill back temporarily and try to perfect it? I think the Committee ought to take these amendments, these substantial amendments and give them consideration, rather than have them disposed of here on the floor.

Mr. J. L. O'Brian — Mr. Chairman, there has been no suggestion made on the floor that I can see which was not already fully considered by the Committee, except that we never had before us in the full form the suspensive veto as presented here.

Mr. Brackett — Did the Committee have in mind the proposition or the fact that a board of supervisors will rarely reduce officers or cut down fees?

Mr. J. L. O'Brian — Mr. Chairman, that certainly was considered. That is why the first section of this bill makes it possible for the Legislature to provide some other type of board than the board of supervisors, that being done by general law.

Mr. Marshall — I would like to ask whether or not the amendment proposed by Mr. Lincoln is not necessary in order to give due effect to the cities article and have no complication between this provision and the provision of the cities article?

Mr. J. L. O'Brian — Mr. Chairman, I think I have stated already, that the amendment offered by Mr. Lincoln was acceptable to the Committee. They have no objection to it. The other amendments that have been offered by Mr. Lindsay and Mr. Coles were not satisfactory. The amendment offered by Mr. Sanders on page 3 of the bill is satisfactory to the Committee.

Mr. Low — Mr. Chairman, I would like to ask the gentleman a question. May I ask you as Chairman of the Committee whether you think the Lincoln amendment in any way affects the home rule bill relating to cities? We distinctly declined to deal with the counties within the city of New York within that law, because they were counties. My proposition is that when this

Convention is dealing with counties the same rule should be applied to all.

Mr. J. L. O'Brian — That question of Mr. Low's is a question of policy upon which there is no difference of opinion. The amendment which we have accepted would leave the counties of Greater New York in exactly the same situation they are in now.

The Chairman — The time has expired for the consideration of this bill in General Orders and the debate is therefore closed. The question occurs upon the motion made, first, by Mr. O'Brian, that we consider this General Order section by section, and I assume by that that he meant section by section of the article of the Constitution. Is there any objection to considering the amendment section by section? The Chair hears none. Inasmuch as the first three amendments relate to Section No. 1, the question will occur, first upon the amendment offered by Mr. Lindsay, which the Secretary will read.

The Secretary — By Mr. Lindsay: Amend by striking out lines 5, 6 and 7, on page 2.

The Chairman — Are you ready for the question? All those in favor of the amendment will say Aye, opposed No. The motion seems to be lost and is lost. The question occurs upon the second amendment offered by Mr. Coles. The Secretary will read.

Mr. Coles — I call for a rising vote.

The Chairman — The Secretary will read the amendment.

The Secretary — Strike out lines 5, 6 and 7 on page 2, and insert in lieu thereof, the following: "After any bill or local or special law relating to a county or counties has been passed by both houses of the legislature, the house in which it originated shall immediately transmit a certified copy thereof to the governing body of the county or counties to be affected, and within 15 days thereafter the governing body shall return such bill to the clerk of the house from which it was sent, who, if the session of the legislature at which the bill is passed has terminated, shall immediately transmit the same to the governor with a certificate of the governing body thereon, stating whether the county has or has not accepted the same. Whenever any such bill is accepted by said governing body it shall be subject, as are other bills, to the action of the governor. Whenever during the session at which it was passed, any such bill is returned without the acceptance of the county or counties to which it relates, or within such fifteen days is not returned, it may nevertheless again be passed by both branches of the legislature, and it shall then be subject, as are other bills, to the action of the governor. In every special county law which has been accepted by the county or counties to which it

relates, the law shall be followed by the words 'Accepted by the county or counties' as the case may be; in every such law which has been passed without such acceptance by the county or counties, 'Passed without acceptance of the county or counties' as the case may be."

The Chairman — A rising vote has been called for. You have heard the amendment proposed by Mr. Coles read. As many as are in favor of the amendment will rise and remain standing until they are counted. The gentlemen will be seated. Those opposed will rise. The motion is lost by a vote of 54 to 26. The question now occurs upon the amendment offered by Mr. Lincoln, which the Secretary will read.

The Secretary — On page 2, line 5, after the word "counties" add the following: "Except to a county or counties which are included with a city".

The Chairman — All those in favor of the amendment will rise. The gentlemen will be seated. Those opposed will rise. The amendment is manifestly carried. The question now occurs upon Section 26 of Article III as amended by the motion of Mr. Lincoln. All those in favor of the amendment as amended will say Aye, opposed No. It is carried. The question now occurs upon Section 27, to which amendments have been offered by Mr. R. B. Smith, which the Secretary will read.

The Secretary — On page 2, line 10, enclose the words "confer upon" in brackets, and after the word "upon" insert "delegate to". On same page, line 12, enclose the word "further" in brackets. The same page, line 12, after the word "and" insert "confer upon them such powers of". Same page, line 19, after the word "any" insert "elective or appointive". Same page, line 20, strike out the words "duly elected or appointed".

Mr. R. B. Smith — Mr. Chairman, I ask that the amendment be divided so that it can be acted upon separately.

The Chairman — A division has been called for. The Secretary will read the first part.

The Secretary — On page 2, line 10, enclose the words "confer upon" in brackets and after the word "upon" insert "delegate to".

The Chairman — All those in favor of that motion will say Aye, all those opposed No. The Chair is in doubt. All those in favor will rise. The gentlemen will be seated. Those opposed will rise. The gentlemen will be seated.

The Secretary will announce the result.

The Secretary — Ayes 43, Noes 47.

The Chairman — The motion is lost.

Mr. R. B. Smith — Mr. Chairman, in view of that action I withdraw the amendment to line 12.

The Chairman — The amendment to line 12 has been withdrawn. The Secretary will read the next part.

The Secretary — Page 2, line 19, after the word " any " insert " elective or appointive ". Line 20, strike out the words " duly elected or appointed ".

The Chairman — All in favor of that amendment will say Aye, opposed No. The motion seems to be carried. It is carried. The Secretary will read the next part.

The Secretary — That is all.

The Chairman — The question now occurs upon Section 27 of Article III. All those in favor will say Aye, opposed No. It is carried. The question now occurs upon Section 2 of the bill, involving Section 2 of Article X. An amendment has been offered by Mr. Sanders, which the Secretary will read.

The Secretary — On page 3, lines 6, 7, 8 and 9, strike out the words " The legislature shall designate for that purpose. Subject, however, to the provision of sections 26 and 27 of article III of this constitution ", and insert in place thereof the following: " Shall be provided by law ". On page 3, line 12, strike out the words " the legislature may direct " and insert in place thereof the following: " May be provided by law ".

Mr. J. L. O'Brian — Mr. Chairman, those amendments are both satisfactory to the Committee and we accept them.

The Chairman — All those in favor of the amendment offered by Mr. Sanders will say Aye, opposed No. Carried. The question now occurs upon Section 2 as amended.

Mr. Foley — Mr. Chairman, may I offer an amendment?

The Chairman — I fear the time has gone by for the offering of amendments.

Mr. J. L. O'Brian — If the Committee has anything to say considering it, they are perfectly willing that any amendment be offered.

The Chairman — Amendments may be offered by unanimous consent.

Mr. Foley — I ask for unanimous consent.

The Chairman — Is there any objection to the offering of the amendment? The Chair hears none. The gentleman will send it to the desk.

The Secretary — By Mr. Foley. Page 3, line 12, after the word " appointed " insert " by the local authorities thereof ".

Mr. Foley — That is to prevent a commission being named in the act of the Legislature, so as to have the appointment made by the local authorities only, or elected by the people.

The Chairman — All who are in favor of the amendment offered by Mr. Foley will say Aye, opposed No. The Chair is in doubt. All in favor will rise.

Mr. F. L. Young — Mr. Chairman, I think a large number of us do not understand the bill. I think Mr. Foley should explain it.

Mr. Foley — I will if I may have unanimous consent.

The Chairman — Mr. Foley asks for unanimous consent to explain his amendment. Is there objection?

Mr. Foley — My recollection is that the Chairman of the committee just referred to his desire and the desire of the committee to eliminate commissions appointed by the Legislature where the names are mentioned in the act. If you are going to grant home rule to the local sub-divisions of the State, I propose on line 12 to provide that all other officers — the preceding paragraph refers to constitutional officers — all other officers shall be elected or appointed by the local authorities thereof, as the Legislature may direct. At the present time the courts have construed the words "or appointed as the Legislature may direct" to confer upon the Legislature the power to appoint in the act itself, or to confer it upon a State officer.

Mr. Wickersham — Mr. Chairman, will the Secretary read Mr. Foley's amendment again?

The Chairman — The Secretary will read.

The Secretary — Page 3, line 12, after the word "appointed" insert "by the local authorities thereof."

Mr. J. L. O'Brian — Mr. Chairman, may we have the last sentence read as it would be amended if this were adopted?

The Chairman — The Secretary will read.

The Secretary — All other officers, whose election or appointment is not provided for by this Constitution, and all officers, whose offices may hereafter be created by law, shall be elected by the people, or appointed by the local authorities thereof, as the Legislature may direct.

Mr. Foley — Mr. Chairman, may I correct the Clerk in so far as he has changed the last phrase, "as the Legislature may direct", because the committee had just changed that? That was changed to read "as may be provided by law". It will now read "or appointed by the local authorities thereof, as may be provided by law." In other words, let us confer home rule entirely on the local authorities.

Mr. Quigg — As it is read, you have the word "thereof" included.

Mr. Latson — "Thereof" means the people.

Mr. Foley — That might be omitted.

Mr. J. L. O'Brian — Do you not mean such local authorities as the Legislature may provide?

Mr. Foley — That is agreeable as long as you avoid a situation like you had in Buffalo where your commission was named in the statute; instead of having the mayor appoint or the board of aldermen or anyone else, or having them elected.

Mr. C. A. Webber — Mr. Chairman, may I ask a question? Does not that last sentence refer to the appointments, State, city or otherwise? It does not refer to cities alone. It says they shall be elected by the people; not by the electors of the city, but by the people. That means the people of the State. It possibly refers to State officers.

Mr. J. L. O'Brian — Mr. Chairman, I have no right to speak for the Committee on County Government, but I think the point made by Mr. Webber, who is a member of that committee, is entirely correct. This last section applies not only to city and county officers, but to all officers whose election or appointment is not specifically provided for by the Constitution. I think, therefore, it is a dangerous amendment and one that will lead us into matters that we have now in contemplation. Personally, I should not accept it.

The Chairman — All those in favor of the amendment offered by Mr. Foley will say Aye, opposed No. The amendment is lost. The question now occurs upon Section 10, as amended, by the amendment offered by Mr. Sanders. All those in favor will say Aye, opposed No. Carried. The question now occurs upon General Order No. 65, as amended by the Committee of the Whole. All those in favor will say Aye, opposed No. It is carried. The Secretary will read the next General Order.

The Secretary — No. 833, General Order 51, by the Committee on Legislative Powers. To amend, generally, article three of the Constitution, following section nine, and to repeal sections twenty-three and twenty-five of such article.

Mr. Barnes — This bill when first introduced was supposed to cover many subjects, and did, but upon examination of Chapter 6, Subdivision 3, of Rule 15, of this Convention, our Committee discovered that the Committee on Legislative Powers and Limitations had these duties: "On the powers and duties of the legislature, except as to matters otherwise referred, to consist of seventeen members." Therefore, I do not think that the brains of this Convention are going to be taxed in examining the measure now before you. In fact, there is nothing contained in it, owing to the fact that so many things have been taken out of it by the other Committees, which requires me to do more than briefly call your attention to what changes there are. On the first page, the

changes are purely of phraseology, cutting out the semicolons and creating sentences beginning with capital letters. On page 2, line 6, the word "promptly" has been introduced, in relation to the publication of the Journal and the proceedings of the Legislature. It seems that during the last few years a great abuse has arisen from the failure to publish the Journal. I understand at one time it was fully a year and a half or two years behind. Therefore, we thought that possibly by putting in the word "promptly" there might be some improvement in that particular regard.

Mr. J. G. Saxe — I understood that you were going to insert the word "record" so that a record might be kept of the proceedings.

Mr. Barnes — I am discussing the bill as it is printed at the present moment. Farther down on page 2 the changes are purely with respect to phraseology. Section 18 of Article III is one which was under discussion here earlier, because of the bills amending it introduced by Mr. J. G. Saxe, Mr. Tanner and Mr. Wickersham. Mr. Wickersham provided for an entirely new method of procedure in regard to private or local bills. I do not know whether he intends to press that method of procedure or not.

Mr. Wickersham — I do not intend to press it. I think the various provisions we have adopted regarding cities and local government have made it inexpedient to press that measure at present.

Mr. Barnes — In that event, it would seem entirely proper that page 3, lines 15 to 19, which are practically the bill introduced by Mr. J. G. Saxe, Printed No. 738, now General Orders, should be added to Section 18 of Article III. If you will read them, you will probably see that there is no objection to them. On page 4 there is an addition in lines 24 and 25, that the Legislature shall neither audit nor allow any private claim or account against the State "or against any political subdivision thereof", the latter part being new, but it may appropriate money to pay claims and accounts against the State that have been audited and allowed. In other words, if that were not in there it might appropriate money to pay claims against municipal corporations. Section 23 of the Article is obsolete. It refers to the statutory revision commission and as to the method in which they should present their reports to the Legislature. We therefore have omitted it entirely from the new Constitution. Section 25 is also omitted for this reason: There seemed to be no justification for the rule requiring the presence of three-fifths of the members in passing appropriation bills; that is, they are passed by a majority vote

or by two-thirds vote, in some instances, and apparently the provision requiring the presence of three-fifths of the members is utterly useless. I cannot find out a great deal about the history of this provision but what I can learn is this, that it was placed in the Constitution in 1846, in connection with Section 24, which is a restrictive provision in regard to tax bills, evidently to prevent some abuse. Mr. Lincoln, in his History of the Constitution, page 439, volume 4, says: "This section was part of the financial reforms included in the Constitution of 1846." The head of the bill drafting department says: "About all I can discover is that someone in the convention of 1846 determined that the provision in question was a good thing, so good, in fact, that he did not consider it necessary to assign any reason for his faith." I should say that the best reason for striking this provision out is that there was never any known reason for putting it in. At the end of page 5, the words "municipal assembly, common council, board of aldermen or other" are stricken out and the words "legislative body" left in, which covers the point. I shall have to move to amend, Mr. Chairman, by striking out all on page 6, from line 1 down to and including line 12, as the Committee of the Whole has just passed an amendment to that section of a contrary nature. The other amendment on page 6, is to correct the spelling of the word "allowed". That is all that this bill does. It cleans up everything from Section 10 to the end of Article III, which is the Legislative Article, leaving that to the Committee on Legislative Organization, Sections 1 to 9, inclusive. I shall be glad to answer any questions that may be asked.

Mr. L. M. Martin — How do you harmonize Section 26 in this bill with the previous bill we have just considered?

Mr. Barnes — I shall have to move to strike out Section 26. That has already been passed upon by the Committee of the Whole. I move to strike out on page 5, beginning with line 15, down to and including line 24. That goes out because it has just been amended by action of the Committee of the Whole.

Mr. Lindsay — I notice on page 3, lines 15 and 16, it says the Legislature shall not pass any act "Granting to any corporation, association or individual the right to prove a claim against the state or against any political subdivision thereof." As I understand, a claim against the State cannot be presented to the Court of Claims, any ordinary claim, unless permission is granted by the Legislature. Let us assume that some person has a valid claim against the State, not connected with the canals or anything of that sort. How is he going to present that unless the Legislature passes a general law allowing all persons to present claims at any time?

Mr. Barnes — I think that is correct, if I hear you correctly. My hearing is not very good. This particular provision is one introduced by Mr. Saxe. I will ask Mr. Saxe to answer this because it is his particular bill.

The Chairman — Will Mr. Barnes kindly send to the desk a written amendment incorporating the amendment which he has orally stated to the Committee?

Mr. J. G. Saxe — After inquiring around the chamber I thought this amendment was generally satisfactory and did not intend to debate it, but possibly, seeing that Mr. Lindsay has asked a question, I had better spend about five minutes explaining to the whole Committee the object and the exact effect of this amendment. The first three lines to which Mr. Lindsay particularly refers come from my bill No. 738, and the next two lines of new matter come from Mr. Tanner's bill, which was subsequently incorporated in my bill, so that it is really Mr. Tanner's proposal, but in his absence possibly I can cover it for him. I do not know on just what page of Mr. Barnes' bill the Committee will find this language, but at some place in that bill it says that the Legislature shall pass general laws providing for the cases enumerated in that section, in other words, all claims against the State shall be covered by general laws and not by special laws. There is a list of about 15 classes of cases in which the Legislature shall not pass special laws, but must pass general laws, and I suggest adding to those classes of laws claims against the State.

Now, what are these claim bills? Every year there are introduced from 25 to 150 special claim bills. Those bills read something as follows: "The Court of Claims is hereby given jurisdiction to hear the claim of Albert Jones or Tom Smith, by reason of this thing or that thing." Every year all of those bills, with the exception, possibly, of one in some years and two in others, are vetoed, because of the principle recognized by all Governors that the jurisdiction of the Court of Claims as to claims of this character ought to be governed by general laws as is provided in the Code and as will be provided for in the Constitution if the judiciary article is accepted, rather than by special laws. If you will let me take a moment more, possibly I will answer your question; if not, I will yield again. I can not express it better than by reading Governor Hughes' veto message of July 26, 1907: "Memorandum filed with 39 bills. The following bills conferring jurisdiction upon the court of claims to determine special cases are disapproved. If the jurisdiction of the court of claims should be enlarged, the law should be amended accordingly. Its jurisdiction should be governed by general rules applicable impartially and not by legislation in favor of particular claimants." And

again, the next year, Governor Hughes wrote, this time after 16 bills: "The following bills conferring jurisdiction upon the Court of Claims to determine special cases or providing for the relief of particular individuals are disapproved. If the general law is not adequate, it should be amended, providing that consideration of the general policy admits such amendment in particular cases." I have here a list of all the special claim bills which have been introduced since the beginning of 1911 and they are the most ridiculous collection of bills that you could get. In 1911 not one of them was signed. For instance, you start off with a bill to confer jurisdiction on the Court of Claims in the case of a man named Brown in the matter of an accident while he was a juror in the year 1899, twelve years before. That was passed and vetoed. It was reintroduced in 1912 and was again passed and vetoed. The next one was for a canning company for damages to farm property. That was introduced, passed, and recalled from the Governor. Another one was for an accident incurred while serving on a jury; that was killed in committee. Another one was passed and vetoed, killed in committee, passed and vetoed, passed and vetoed, and so on down the line, until you come to the claim of Michael O'Keefe, for damages while working on the Capitol in July 1879, 32 years before. That was passed and vetoed. It was introduced and sent down in 1913 and again vetoed. It was introduced and sent down to the Governor in 1914, when it was again vetoed. I might run down the line where there are a number more in 1911. None of them were signed. They cluttered up the Legislature, making a basis for deals to get special bills passed, and served no useful purpose whatever. In 1912 there was another long line of them, some of them the same, some having been coming in annually for five or ten years. The only one that was signed that year was one for counsel fees in the Allds-Conger case. When I tell you that one of the members of this body introduced it, and it was the only one signed, you will readily guess that the introducer was Mr. A. E. Smith of New York. That was one to confer jurisdiction on the Court of Claims to determine the matter of counsel fees in connection with the Allds-Conger case. It was introduced by Mr. Smith, passed, and signed by Governor Dix. Mr. Malone had one after that, a special appropriation bill. Mr. Conger got his claim paid in the Court of Claims but Mr. Allds lost, so that ever since you have had a special appropriation bill in to see if you could not take care of Mr. Allds' counsel in that manner. I am not one of those who have the slightest objection to counsel receiving fees from the State when they are performing services for individuals in connection with public officers, and for a public investigation, but

if that should be done, it is obvious it should be done in such a manner and guarded in such a way by general law that all people similarly situated will be taken care of, and so that the Legislature will not award counsel for one particular public litigant and turn down another.

Last year there were more of them introduced than ever before; something like sixty-nine of them. One or two were signed. One of them, for instance, is the very venerable and moss-covered claim of J. I. Monroe, for injuries sustained while employed in the Kings Park State Hospital. That was passed and vetoed in 1913, passed and vetoed in 1914, passed and sent down to Governor Whitman in 1915, recalled from the Governor and then sent down to him and finally signed. So, John Monroe having had special claim bills pending for three years at least, as the record shows, finally got special jurisdiction conferred upon the Court of Claims to hear that particular claim. I do not know what the matter with John I. Monroe was, but if he had some real grievance, possibly he had, then there clearly should be a general jurisdiction conferred upon the Court of Claims to take care of any person similarly situated, it ought to be done by general law. Under that policy, Governor Hughes vetoed every single one of those bills. Governor Glynn vetoed every single one of them on the ground that is stated in this proposed amendment to the Constitution, that all classes of cases should be taken care of by general law, rather than by a special bill.

Mr. A. E. Smith — How would you frame a general act to cover the case of Michael O'Keefe? It would have to be something like this, that any person or persons struck in the eye in 1872 with a piece of stone while helping to erect the Capitol can go before the Court of Claims.

Mr. J. G. Saxe — Well, Governor Hughes answered that question in this way: "If the general law is not adequate, it should be amended, provided that consideration of the general policy admits of such amendment." Now, Mr. Lincoln.

Mr. Lincoln — I was going to explain to you what the Monroe case was. It was the case of a man who was working as an electrician in a State hospital for the insane and was struck by one of the insane inmates and seriously injured. Following the line of thought of Mr. A. E. Smith, it would be very difficult for any general law to be enacted which would include cases like this one.

Mr. J. G. Saxe — There are two answers to that, Mr. Lincoln. The first is, if you are right, if there are cases of that kind, there ought to be a general law; but, assuming that the State must take care of them, assuming that a general law is impossible and the

case is so meritorious that you have really got to give them special relief, there is a simple way of getting over this jurisdiction, to wit, to give them a special appropriation. That is done quite often in that class of cases. It is easier to do it, and will continue to be easier to do it that way. Now, Mr. Lindsay, I will answer your question if I have not already done so.

Mr. Lindsay — That answers my question, Mr. Chairman, but that special appropriation seems to be cut off by this bill also.

Mr. J. G. Saxe — This does not affect appropriations at all.

Mr. Lindsay — You cannot make appropriations except by having them audited and the bill says so.

Mr. J. G. Saxe — This does not refer to appropriations at all.

Mr. Barnes — I think, Mr. Lindsay, if you will pardon me, if you will read lines 24 and 25 on page 2, you will see that they have to be taken in connection with everything on the next page.

Mr. Lindsay — What I was thinking of was a case like this. A case of a girl working in a prison laundry, where the State neglected to put any guard upon one of these mangles, and her arm was drawn in and the entire arm taken off. Wouldn't you provide for some such injury as that?

Mr. J. G. Saxe — I think some such thing ought to be taken care of, but certainly by general law. Where an injury occurs on State property, the Court of Claims has the right to audit the claim if it is a proper claim for payment. As Governor Hughes said, it is a question of general law.

Mr. Deyo — Would there be any way of taking care of that case except to make the municipality, the city or a subdivision of it, liable in all cases where a private individual or a private corporation would be liable under like circumstances? If that be the case, would the gentleman be in favor of conferring upon the Court of Claims jurisdiction to hear all such cases?

Mr. J. G. Saxe — I am in favor of leaving it to the Legislature where it can be worked out scientifically. Under the judiciary article the Court of Claims will exercise the jurisdiction given it by that article and by general laws; and if there is that classification that has been spoken of and which a good many of us have in mind, that is something which ought to be taken care of by the Legislature in the proper way.

Mr. Chairman, Mr. Marshall suggests that at two places in my amendment I used the language "political subdivision" and that in the other Constitutional Amendments the words "civil division" are used. I offer the following amendment and trust that the Chair will put the question immediately as it is merely to perfect my bill.

The Chairman — Mr. Saxe offers the following amendment which the Secretary will read.

The Secretary — From lines 16, 17 and 18, of page 3, strike out the words "political subdivision" wherever they occur and substitute in place thereof "civil division."

Mr. R. B. Smith — The same applies to page 4, line 25.

Mr. J. G. Saxe — Also in Mr. Tanner's amendment, page 4, lines 24 and 25, the same amendment. May I ask for the question on that so that the bill may be perfected.

The Chairman — Is there objection to immediate consideration of that amendment? The Chair hears none. All those in favor of the amendment will say Aye, opposed No. It is carried.

Mr. Barnes — Mr. Chairman, I should like to inquire if there are any other questions about this article?

Mr. Austin — Mr. Chairman, I have already spoken to Mr. Barnes about this matter. I see that section 15, on page 2, covers exactly the same subject as the amendment introduced by me, which has been finally passed upon by the Convention. Mr. Barnes tells me that this simply changes the wording slightly, and that is certainly true. I have no objection whatever to this wording, but I simply wish to inquire what the effect would be if this should be passed, and there should be two amendments of the same section differing slightly in verbiage. What would the result be? I am frank to say I do not know.

Mr. Barnes — Mr. Rodenbeck is not here, but it is very clear to my mind.

Mr. Austin — It has been passed upon by the Committee on Revision, passed on third reading and finally passed upon by this Convention.

Mr. Barnes — This becomes an amendment to the amendment adopted.

Mr. Austin — It is not an amendment to the amendment already adopted. The only way you can do that would be by reconsidering the vote on my amendment, as I understand it. I have no objection to this wording, but I simply want to know where we are coming out.

Mr. Barnes — It only makes the language conform through the whole article to the use of sentences instead of semicolons. But I cannot help, as a matter of debate, saying this, that after your amendment has been passed and this amendment is passed, it becomes an amendment to yours and when the Committee on Revision takes up the Constitution presented as a whole it will contain your amendment and this amendment, and I think that is clear.

Mr. Wickersham — That is so.

Mr. Austin — If the parliamentary expert states that, I have no objection.

Mr. Wickersham — Would it not be better to have them conform, if we can do it, rather than send in two provisions covering the same subject in a little different language to the committee?

Mr. Barnes — The difficulty is the emergency message matter in Mr. Austin's amendment is already passed; now this is an amendment to that and when the Committee on Revision takes it up they will simply consider this phraseology.

Mr. R. B. Smith — Mr. Chairman, I offer the following amendment.

The Secretary — By Mr. R. B. Smith: Page 2, lines 20 and 21, enclose in brackets the words: "no amendment thereof shall be allowed and".

Mr. Barnes — Mr. Smith, may I ask you to withhold a moment until I inquire whether there are any explanations with regard to this bill, before we take up amendments?

Mr. A. E. Smith — I would like to ask a question, Mr. Chairman. I would like to know why section 5 is taken out?

Mr. Barnes — It is taken out on the theory that it is an absolutely useless provision. It takes 76 votes to pass a bill. In some instances appropriation bills two-thirds. That three-fifths jurat has become a great nuisance and you may remember the discussion that we had in the committee. It was agreed that it served no useful purpose and disturbs the machinery of the Legislature.

Mr. A. E. Smith — Well, I don't know whether I am ready to agree with you, Mr. Chairman. I think it is very wholesome for the State.

Mr. Barnes — Well, we can debate that. It is extremely important.

Mr. A. E. Smith — It is a pretty good thing to have ninety men in this House when you pass appropriation bills. I see in it a certain protection to the minority.

Mr. Barnes — Well, we have not insisted upon it.

The Chairman — May I say that Mr. R. B. Smith has sent another amendment to the desk which perhaps we would better have read.

The Secretary — Page 2, line 22, strike out the word "thereafter" and insert "after it is conclusive."

Mr. Root — Mr. Chairman, I offer this amendment.

The Secretary — By Mr. Root: Page 2, line 5, after the word "proceeding" strike out the comma and insert the words "and a record of its debates." Page 2, line 6, after the word "same" insert the words "from day to day."

Mr. Root — Mr. Chairman, the effect of that amendment would be to provide that the Legislature shall do precisely what this Convention has done in respect to these debates; precisely what

the Congress of the United States does, what the French Senate and Chamber of Deputies do, what the British House of Lords and House of Commons do. The effort of this Convention in dealing with the conduct of our government has rightly been to seek to bring about public action rather than private, and I will not say secret, but unknown action. We have required that instead of the Governor sitting down for thirty days after the adjournment of the Legislature to revise in his own chamber the acts of the Legislature in making appropriations and in passing all kinds of bills, the Governor shall state in public, before the action of the Legislature, precisely the consideration which hitherto he has acted upon in private in reviewing the action of the Legislature so that the resources and expenditures of this State shall be necessarily a matter of public discussion before the Legislature acts. This measure is designed to make the reasons for action on the part of the Legislature matters of public record. It is designed to enable the people of the State to know why the Legislature passes bills and why it refuses to pass them. It is designed to restore the art of debate to the Legislature of this State. It is designed to make the Legislature of the State an avenue to preferment, so that able and ambitious young men of the State may seek places in the Senate and the Assembly in order that they may demonstrate their capacity and become known to the people of the State. As it is now, no one knows what the Legislature is doing or why it is done except as the quite limited news articles of the public press are spread through the State. The record of this Convention printed from day to day has gone to the libraries, to the newspapers, to the people interested in what we are doing, and have been the basis for the discussion of our affairs throughout the State, and already there has come back to us an expression upon many of the measures before us of public opinion based upon the records of our debates, which has in turn had its just and salutary influence upon opinion in the Convention.

I see no reason, sir, why this great State of eleven millions of people should permit its Legislature to do its business in such a way that there is no means of knowing the reasons for its action. I have had a memorandum prepared showing the cost. I find that down to the 22d of August, a period fully as long and involving fully as much debate as could be expected at any session of the Legislature, the cost of printing the Record which contains all our proceedings and debates was $13,780, and the cost of transcribing the stenographer's notes for the printer was $1,965, making a total cost of $15,745. If you assume that each House of the Legislature would have as much debate as we would have, which I think is going quite beyond

the probabilities, you would have this record printed and distributed for a little over $30,000 a year for both Houses, an expenditure which, applied to the very vital center of the government of the State, may well be afforded, and for which many, many expenditures of the State government could well be foregone. I wish, sir, while I am upon this subject, to take the occasion to express a very high appreciation of the admirable manner in which the stenographer of this Convention, Mr. Marshall, has performed his duties, and of the manner in which the printer who contracted with the Printing Board under the direction of the Convention to do our printing, has done the work. In the last Convention, twenty-one years ago, there was hardly a day, never a week, passed without complaints from members of the Convention of the unsatisfactory and dilatory way in which the documents, the Record, the Journal, the bills, were furnished. We would sometimes find ourselves a week behind hand in the records that were needed for the performance of our duties, and I have not observed in this Convention since the early days of organization until this time, when we are nearly through with our work, a single dereliction on the part of either the stenographer or the printer, and the cost has been kept rigidly within limits and has been less, both as to the stenographer and the printing, than the original estimate by the Printing Committee and the Committee Upon Contingent Expenses. Now, Mr. Chairman, I do not want to spend any more time over this, and I will close my advocacy of this measure by saying that we ought to dignify the Legislature of this State; we ought to seek to make it respected and honored. We ought to treat it as being worthy of attention by people of the State. We ought to proceed upon the theory that the arguments that are made here for and against measures of public interest are worth attention, are worth being known to the people of the State. This measure, this amendment will tend in that direction. It is something, sir, that we cannot expect the Legislature itself to do. They would feel a natural hesitancy in changing, for the purpose of printing and publishing their own words, the long-established custom, and therefore I think we ought to do it for them.

Mr. A. E. Smith — Mr. Chairman, I desire to say that after my experience, I certainly very heartily approve of the printing of the record of the Assembly and of the Senate. There is no question that it would have been ordered by both Houses before this, but there always enter into the consideration of the proposition the cost. If, however, it is made part of the Constitution, and people are satisfied that it is something that should be done, it can be carried out. It serves to instruct the youth of the State,

to a certain extent. Constantly during the session members of the Legislature are in receipt of applications from debating societies and settlement houses where they have evening sessions to talk over public affairs asking for the debates, for instance, on the reorganization of the labor department, or the creation of the Workmen's Compensation provision and the Short Ballot and other things, and the members here are obliged to write back and say they have no such thing before them. I know, this winter, we had several very important propositions upon which members themselves tried to secure some literature around the capitol in relation to the subject to send to debating societies, and so I think it will do a great deal of good. And another thing, it will be a kind of automatic valve on the hot air, and if there is anything needed in this room, it is said valve. There is a good deal said here that when it gets into print won't look very good, and this may restrain some people from saying it. I am desirous of offering an amendment to page 5, restoring section 25, removing the brackets around section 25.

The Chairman — Will the gentleman send the amendment to the desk. Is there any further debate upon this Proposed Amendment?

Mr. Leggett — The Proposed Amendment by Mr. Smith relieved my feelings. I had been waiting for some gentleman of this Convention to rise to the defense of sections 23 and 25 and insist that they should not be taken out of the Constitution because, to say the least, they could not do any harm. Of course, section 23 has not the venerableness of section 25, but in all other respects it stands on the same basis.

Mr. Barnes — Section 23 has no application at all.

Mr. Leggett — It has been in the Constitution several years because it would not do any hurt.

Mr. Barnes — If there is any sentiment that section No. 25 ought to be retained, I don't believe the Committee cares particularly whether it should or not. It seems to me it is a wrong method. Section 23 ought to be stricken out, because there are no such commissioners. To leave it in the Constitution is an absurdity.

Mr. R. B. Smith — Mr. Chairman, I offer an amendment which would require the presence of three-fifths of the members upon the passage of any bill. Now, let me give you the history of it. Approximately ten years ago upon a bill other than that specified in section 25 we had a majority jurat passed by 76 votes upon the bill, and specified in section 25, we had what is known as a three-fifths jurat. Now, in practice a jurat is attached to the bill by the chief of the engrossing room who may or may not

be a lawyer, and if he is a lawyer he may not be a Constitutional lawyer. The result was a number of acts were declared unconstitutional because the wrong jurat had been attached. At that time I threw out the majority jurat and substituted the three-fifths jurat on all bills so that there could not any mistake of that kind occur. About three years afterwards, after one of the Senate bills had been declared unconstitutional because of a majority jurat when it should have had a three-fifths, the Senate Clerk followed suit and threw out the majority jurats on the Senate side and used the three-fifths jurat. That practice has been followed. We have never suffered any inconvenience, and in my judgment it will continue to be followed if you leave the Constitution as it is, and I see no reason why the presence of 90 men in this House, in the Assembly, should not be required upon the passage of any bill; either that, or as Mr. Barnes proposes, make a quorum only sufficient: but do one or the other, because as a matter of practice the clerks of the Legislature have had to adopt that proposition, and if permitted I will offer an amendment to that section which will accomplish that result.

Mr. Lindsay — Mr. Chairman, I want to say that one of the best things the Committee has done is to strike out section 23. That was one of the most vicious things in the Constitution, because it was put in there for the purpose of exempting special provisions in certain cases. I want to give this one illustration: You will notice on page 3, line 20, "The legislature shall pass no private act granting to any corporation, association or individual the right to lay down railroad tracks "— Now, this section 23 was put in there so that all they had to do was to have the railroad commission certify to the proposition, and it could get around that provision preventing the Legislature from passing a special law for laying down a railroad track in a city street. I ran up against this in a law suit in which I was engaged, and I found just such a law as this, preventing them laying a railroad track in a street, and to make it constitutional, they had it certified by these commissioners, which was a sort of continuing thing. If you leave that in, they can violate every provision of the section. It is out and it should stay out.

The Chairman — Mr. Smith offers the following amendment which the Secretary will read.

The Secretary — By Mr. R. B. Smith, page 5, line 7, strike out the bracket; same page, line 8, after the word "act" insert a bracket; same page, line 11, after the word "state" insert a bracket. Same page, line 14, strike out the bracket.

Mr. R. B. Smith — Mr. Chairman, that refers to the preceding amendment which I offered on page 2, lines 20 and 21. That

has for its object the striking out from the Constitution, the utterly useless and disregarded provision that no amendment to a bill shall be offered upon third reading. That provision has been constantly evaded from the time it was placed in the Constitution by the amendment made upon third reading, which all of the members of this Convention have had practical demonstration of by moving to recommit to the Committee with instructions to report the same forthwith amended as follows: During the past ten years 95 per cent. of the amendments made in this House, in the Senate and the Assembly have been made upon third reading, and the reason for that was that it saved a duplication of speeches, a duplication of amendments, and was a saving of time to the House. Now I see no reason, no practical reason whatever that an amendment when offered upon third reading and the member says "I offer the following amendment" and if it is adopted the journal clerk uses the rubber stamp, Mr. So-and-so moves to commit the following bill to the Committee on Cities with instructions to report the same forthwith amended as follows and the continued use of that stamp takes up about 100 pages of the Assembly Journal each year and it is absolutely useless and absurd.

Mr. Barnes — The Committee accepts that amendment by Mr. Smith.

Mr. Westwood — The provision of the Constitution that the bill in its final form shall remain a certain length of time on the desks of the members will remain?

Mr. R. B. Smith — Yes. And if there was ever any reason for this provision it has been obviated by that provision of the Constitution of 1894.

The Chairman — Is the Committee ready for the question? The question occurs on the amendment offered by Mr. Barnes. The Secretary will read.

The Secretary — By Mr. Barnes. Page 5, strike out all of lines 15 to 27 inclusive; page 6, strike out lines 1 to 12 inclusive.

The Chairman — Are you ready for the question. All those in favor will say Aye. Opposed, No. It is carried. The question now occurs upon the first amendment offered by Mr. R. B. Smith, which the Secretary will read.

The Secretary — Page 2, lines 20 and 21. Enclose in brackets the comma before the word "no" and the words "no amendment thereon shall be allowed and"; so that the section will read: "Upon the last reading of a bill the question upon its final passage shall be taken immediately thereafter and the yeas and nays entered on the journal."

Mr. R. B. Smith —And the word "thereafter"?

The Chairman — The Secretary will read the second amendment.

The Secretary — Page 2, line 22, strike out the word "thereafter" and insert the words "after its conclusion".

The Chairman — The Secretary will read the entire section as amended by both amendments.

Mr. Olcott — Mr. Smith, can't you do without the words "after its conclusion".

Mr. R. B. Smith — Mr. Chairman, I will withdraw the second amendment.

Mr. Olcott — "Thereafter" wants to come out.

Mr. R. B. Smith — I think so myself.

Mr. Olcott — I don't see that any word there is necessary.

The Chairman — The Chair understands that the second amendment offered by Mr. Smith has been withdrawn.

Mr. R. B. Smith — Unless there is objection.

The Chairman — Is there any objection?

Mr. Olcott — Mr. Chairman, I object, so far as the withdrawal of the part of the amendment which strikes out the word "thereafter" is concerned.

Mr. R. B. Smith — I accept the suggestion.

Mr. Olcott — The word "thereafter" should be stricken out.

Mr. R. B. Smith — Instead of saying "upon the last reading" say "immediately upon the last reading", "immediately after the last reading of the bill".

Mr. J. G. Saxe — Mr. Chairman, I should like to ask Mr. Smith what he means by striking out the word "thereafter" in that part of the bill which reads "Upon the last reading of a bill no amendment thereof shall be allowed and the question upon its final passage shall be taken immediately thereafter and the ayes and nays entered upon the journal".

Mr. R. B. Smith — Because the word "upon" and "thereafter" do not work together.

Mr. J. G. Saxe — I would like the language of the Constitution the way it is now. I want to know what we are doing.

Mr. Wickersham — Mr. Chairman, would it not be better to put the word "immediately" in line 20, the beginning of the line, so it would read "immediately upon the last reading of the bill, the question upon its final passage shall be taken," and so forth.

Mr. Quigg — That seems to be all right.

Mr. Wickersham — Mr. Chairman, I move to amend by inserting the word "immediately" at the beginning of line 20, and by striking out in line 22 the words "immediately thereafter". So

that the sentence will read: "Immediately after the reading of a bill, the question upon its final passage shall be taken and the ayes and nays entered upon the journal".

Mr. A. E. Smith — Mr. Chairman, is it "immediately upon" or "immediately after"? We don't want any construction which will say that you cannot offer any amendments on a third reading, and it might be made to read "immediately after a third reading has been finished".

Mr. R. B. Smith — Say "immediately after", then.

Mr. Marshall — Why not make it "immediately after the reading"?

Mr. R. B. Smith — I accept that.

Mr. Wickersham — Strike out the word "upon" at the beginning of the line and insert "immediately after".

The Chairman — Mr. Wickersham moves to amend the motion made by Mr. R. B. Smith, that the word "upon" at the beginning of line 20 shall be omitted, and that the sentence shall begin "immediately after", and on line 22 strike out the words "immediately thereafter", so that the sentence would read: "Immediately after the last reading of a bill, the question upon its final passage shall be taken and the ayes and nays entered upon the journal". Are you ready for the question? All those in favor will say Aye, opposed No. The motion is carried. The question now arises upon the amendment offered by Mr. Root, which the Secretary will read.

The Secretary — By Mr. Root: Page 2, line 5, after the word "proceedings" strike out the comma and insert the words "and a record of its debates". Page 2, line 6, after the word "same" insert the words "from day to day".

The Chairman — Are you ready for the question? All those in favor of the amendment will say Aye, contrary No. It is carried.

Mr. Doughty — Mr. Chairman, would that record mean a printed record, as construed by this language, or would it mean a stenographic record?

Mr. Wickersham — It is to be published. A stenographic record cannot be published.

Mr. Doughty — It might be typewritten.

Mr. Wickersham — It cannot be published in typewriting.

The Chairman — The question occurs upon the amendment offered by Mr. A. E. Smith, which the Secretary will read.

The Secretary — By Mr. A. E. Smith: Strike out the brackets in lines 7 and 14, and thereby restore to the print of the bill "Section 25."

Mr. Barnes — Mr. Chairman, has the time expired for the consideration of this bill?

The Chairman — We have a moment or two left.

Mr. Barnes — Mr. Chairman, I believe this Convention will keep that bracket in. You have before you several considerations in regard to it, either to preserve the present system of a majority that is 76, if you take the Assembly for example — 76 to pass some bills and 76 votes, with three-fifths present to pass some others. Mr. A. E. Smith proposes to leave it as it is. Mr. R. B. Smith proposes to make it all three-fifths, therefore if 76, a majority of the members of this legislative body, of the Assembly, or of the Senate, cannot be present to perform all those functions which they are permitted to do by the Constitution, that is, except where two-thirds vote is necessary to pass — it proposes to establish a rule of three-fifths being present to perform any functions whatsoever which is in itself an absurdity.

Mr. A. E. Smith — Mr. Chairman, I withdraw my amendment and I am in favor of Mr. R. B. Smith's amendment. Has that been put to the Convention as yet?

The Chairman — It has not.

Mr. A. E. Smith — I understand Mr. Smith's amendment is three-fifths present all the time.

The Chairman — Mr. A. E. Smith withdraws his amendment. Is there any objection? The Chair hears none. The question occurs upon the amendment offered by Mr. R. B. Smith, which the Secretary will read.

The Secretary — By Mr. R. B. Smith: On page 5, line 7, strike out bracket. Same page, line 8, after the word "act" insert bracket; same page, line 11, after the word "State" insert a bracket, and same page, line 14, strike out the bracket so that the section would be restored to the bill and would read as follows: "On the final passage, in either House of the Legislature, of any act, the question shall be taken by Ayes and Nays, which shall be duly entered upon the journal, and three-fifths of all the members elected to either House shall, in all such cases, be necessary to constitute a quorum therein".

Mr. Olcott — Mr. Chairman, may there not be a word of discussion from the committee about this?

The Chairman — I think so.

Mr. Olcott — If so, I desire to say it seems to me this would be unwise. It seems to me, as Mr. Barnes says, that where there is a majority present, you ought to let that majority pass these bills. Otherwise, it would put the House under the control of a minority. If a majority of three-fifths was required, why could not the minority, when it wanted to prevent the passage of a bill, walk out and delay action or cause great difficulty?

Mr. Quigg — And do more by staying away than it could by coming.

Mr. Olcott — It seems to me that a majority of 76 is enough to pass whatever bills are presented.

Mr. R. B. Smith — Mr. Chairman, I am not insistent either way, except to have it one way or the other. I can only say that there has not been a bill passed in the Assembly in ten years but what the journal shows that three-fifths were present.

Mr. Olcott — Your journal has been false —

Mr. R. B. Smith — The journal says so.

Mr. Olcott — Why not let a majority do it.

Mr. Root — Perhaps that is why the journal has not been published for a long time.

Mr. Olcott — You cannot find any journal for the year 1914.

Mr. Parsons — Mr. Chairman, I hope that Mr. Smith's amendment will not prevail and the amendment reported by the Committee will prevail. It seems to me we ought to leave it in the power of the majority to do business. They should have the power and they should be responsible and there may come a time, where if you leave the three-fifths provision in, the minority would prevent business being done.

Mr. A. E. Smith — Mr. Chairman, this is a more serious matter than the Convention may think it to be. I think it is the height of ridiculousness to say it is unreasonable — I think it is unreasonable to say that when a bill is passing this house amending a statutory law of this State there should not be 90 people present out of 150. Now, I submit that an absentee roll of 60 men out of 150 is as large as should be tolerated in this House when it is amending a law of this State.

Mr. Quigg — Will you let me interrupt you?

Mr. Smith — Surely.

Mr. Quigg — Don't you see that under a provision of that sort, by staying away they could do more in preventing the passage of a bill than if they came here and attended to their business?

Mr. A. E. Smith — No, sir, I do not see that, for this reason, that 76 men on the majority side of this House, controlling the house, can get an order from the Speaker, with unlimited funds in the Comptroller's office, in the miscellaneous expense account, and plenty of sergeants-at-arms to send to different parts of the State, and they could bring them in here and dismiss them if they did not come.

Mr. Quigg — And that is what we can do but what we have not done.

Mr. A. E. Smith — That is what you have not done, but it is what we do in the Assembly.

Mr. Wickersham — Mr. Chairman, is not there another consideration? If this journal of the proceedings is published from day to day and the list of absentees is there recorded and sent broadcast throughout this State, an enlightened public sentiment will soon enable the leader of the majority here to have the requisite number to do business.

Mr. Barnes — Mr. Chairman, point of order.

The Chairman — The gentleman will state his point of order.

Mr. Barnes — The time for a vote has arrived.

The Chairman — I believe the time limit for the consideration of this measure has expired. Are you ready for the question? The question is upon the amendment offered by Mr. R. B. Smith, which the Secretary will again read.

The Secretary — Page 5, line 7, strike out bracket. Same page, line 8, after the word "act" insert a bracket. Same page, line 11, after the word "state" insert a bracket. Same page, line 14, strike out the bracket.

The Chairman — The Chair desires to call attention of the Committee, however, to the fact that line 6 should likewise be stricken out.

Mr. R. B. Smith — I ask unanimous consent, Mr. Chairman, to offer a technical amendment.

The Chairman — Is there any objection?

Mr. Barnes — Mr. Chairman, do I understand that we are not to have a rising vote?

The Chairman — A rising vote has not been asked for. Those in favor of the amendment will rise.

Mr. Wickersham — Mr. Chairman, this is on Mr. Smith's amendment?

The Chairman — On Mr. Smith's amendment. The gentlemen will please be seated. Those opposed will rise. The gentlemen will please be seated. The Secretary will announce the result.

The Secretary — Ayes 51, Noes 38.

The Chairman — The motion has been carried.

The Chairman — Mr. R. B. Smith has sent another amendment to the desk. The Secretary will read.

The Secretary — Page 5, line 14, enclose the word "such" in brackets.

The Chairman — Are you ready for the question? All those in favor of the amendment will say Aye, those opposed No. It is carried.

The Chair desires to call attention of the Committee to the fact that line 6 should be stricken out.

Mr. Wickersham — I move it be stricken out.

The Chairman — The question is on the striking out of line 6. All those in favor will say Aye, those opposed No. It is carried. The question now occurs upon the amendment, General Order No. 51, as amended.

Mr. Barnes — I move the bill.

The Chairman —All those in favor will say Aye, opposed No. Carried. General Order No. 51 is approved. The hour of recess having arrived, if there are no other propositions to be made, I desire that the Committee of the Whole stand in recess until eight-thirty.

Mr. Wickersham — Mr. Chairman, I move to rise, and that we report the action that has been taken, go into the Convention.

The Chairman — Mr. Wickersham moves to rise and report progress, report the action of the Committee of the Whole with reference to the General Order. Those in favor will say Aye, opposed No. Carried.

(The President resumes the Chair.)

Mr. Hinman — Mr. President, the Committee of the Whole having had under consideration General Orders No. 65 and No. 51, beg leave to report that it has had them under consideration, and report in favor of the adoption of General Order No. 65, with amendment, and also in favor of the adoption of General Order No. 51, with amendment.

The President — The question is upon agreeing to the report of the Committee of the Whole upon General Order No. 65. All in favor of agreeing to the report will say Aye, contrary No. The report is agreed to, and the amendment is advanced to the order of third reading.

The President — The question is upon agreeing to the report of the Committee of the Whole, recommending the passage of No. 51. Mr. Parsons.

Mr. Parsons — Mr. President, I move to disagree with that, so far as it includes the amendment of Mr. Smith, requiring three-fifths to be present on the passage of all bills, and I ask that the vote on that motion lay over until half-past eight this evening.

The President — Manifestly we cannot continue discussion now.

Mr. A. E. Smith — Mr. President, there is something I would like to do to facilitate the business of the house.

The President — Without objection, the vote on the motion to disagree — on the question to agree will lie over until after the recess.

Mr. A. E. Smith — Mr. President, on yesterday afternoon, one of my proposed amendments to the conservation article was put in the wrong place. I desire now to move to instruct the Committee on Revision to amend as indicated.

Mr. President — Do you wish the vote now, or after recess?

Mr. A. E. Smith — I would like the vote now.

The President — The Secretary will read the proposed instruction.

The Secretary — By Mr. A. E. Smith. Introductory No. 708, Print No. 825, by Mr. Dow, being the conservation article, page 2, lines 24 and 25, strike out "and with the enforcement of the general laws of the State in respect thereof;". Page 3, line 6, after the word "shall" add the words "also be entrusted to the enforcement of the general laws of the State respecting the subject hereinbefore enumerated and".

The President —All in favor of the motion will say Aye, contrary No. The motion is agreed to.

Mr. Rodenbeck — The Committee on Revision and Engrossment wishes to present the following report.

The President — The Secretary will read the report.

The Secretary — Mr. Rodenbeck, from the Committee on Revision and Engrossment, to which was referred Constitutional Amendment No. 851, introductory No. 712; also Proposed Constitutional Amendment introduced by the Committee on the Judiciary, No. 850, introductory No. 718, report the same as examined, found correct, and correctly engrossed.

The President — The question is on the report of the Committee. All those in favor will say Aye, contrary No. It is agreed to, and it will go upon the calendar of third reading.

Mr. Berri — Out of order, I ask unanimous consent of the Convention — I wish to introduce a resolution, which, contrary to custom, I am going to ask Vice-President Schurman to submit, that it be taken out of the hands of our President. Day before yesterday was a wonderful day in this Convention, and we have had since that time so many inquiries for the great address that was given to us by your President, that it has been impossible for us to furnish anything like the number that have been required, and I am going to ask Vice-President Schurman to submit the following resolution which I hope you will adopt.

Vice-President Schurman — Will the Secretary read the resolution?

The Secretary — Resolved, That the Printing Committee be authorized to have printed as a document, 2,500 copies of the address of the President of this Convention delivered in Committee of the Whole when it had under consideration the proposal

from the Committee on Governor and Other State Officers in relation to the short ballot.

Vice-President Schurman — The question is on the adoption of the resolution offered by the Chairman of the Committee on Printing. Those in favor will say Aye, opposed No. The resolution is unanimously agreed to, Mr. President.

The President — If the Convention does not regard this as a permanent deposition from the Chair, I know the members of the Convention will be pleased to hear the telegram which I have just received in relation to our afflicted associate who has been making such a great fight for his bill under adverse circumstances.

The Secretary — Fred Tanner successfully operated upon this afternoon for appendicitis. Doing splendidly. Wanted me to thank you for your telegram which was received shortly before operation. E. C. Chambers.

Mr. Wickersham — I move, sir, that the Secretary be instructed to telegraph to Mr. Tanner the hearty good wishes and loving expectations of this body for his speedy recovery and congratulations upon his good progress at the present time.

The President — All those in favor will say Aye, opposed No. It is unanimously agreed to.

Mr. J. G. Saxe — In order to lighten up our calendar and in view of the fact that my amendment, No. 738, which was incorporated in Mr. Barnes' Proposed Amendment, has now been approved by the Committee of the Whole, I move to recommit introductory No. 214, print No. 738, to the Committee on Legislative Powers.

The President — All those in favor will say Aye, opposed No. Carried.

Mr. Wickersham — I move we take a recess until 8:30 this evening.

The President — The Convention now stands in recess until half-past eight this evening.

Whereupon, at 6:10 P. M., the Convention took a recess until 8:30 P. M. the same day.

AFTER RECESS — 8:30 P. M.

The President — The Convention will come to order.

Mr. Rodenbeck — Mr. President, I present the following report from the Committee on Revision and Engrossment.

The Secretary — Mr. Rodenbeck, for the Committee on Revision and Engrossment, to which was referred proposed constitutional amendment introduced by the Committee on Governor

and Other State Officers, Print No. 843, Introductory No. 716, reports same as examined, found correct and properly engrossed.

The President — All in favor of agreeing with the report will say Aye. Opposed No. The report is agreed to.

Mr. Rhees — The Committee on Governor and Other State Officers proposes the following amendment to the Constitution.

The President — Is there objection? Without objection, the report will be received.

The Secretary — The Committee on Governor and Other State Officers to which was referred several proposed amendments to Article V of the Constitution reports by proposed constitutional amendment entitled proposed constitutional amendment repealing section 5 of article V of the Constitution, and creating a new section to be appropriately numbered.

The President — Second reading.

The Secretary — Proposed constitutional amendment repealing section 5 of article V of the Constitution and creating a new section to be appropriately numbered.

The President — Is any special disposition of this bill desired? Referred to the Committee of the Whole.

Mr. Barnes — I should like to move that No. 732, introduced by Mr. Tanner, now in Committee of the Whole, be referred back to the Committee on Legislative Powers, inasmuch as it has been passed in general orders, the general bill which we passed just before adjournment, in order to clear off the calendar.

The President — Those in favor of the motion will say Aye. Opposed, No. It is agreed to. The matter pending at the time recess was taken was the question of agreeing to the report of the Committee of the Whole. The question is upon agreeing to the report.

Mr. Parsons — I made a motion to disagree with the report of the Committee of the Whole. I wish to change that motion. I move to amend the motion to agree by a motion to recommit to the Committee of the Whole with instructions to strike out the Smith amendments in section 25 and report forthwith.

The Secretary — Mr. Parsons moves to amend the motion to agree with the report of the Committee of the Whole on General Order No. 51, as follows: By recommitting to the Committee of the Whole with instructions to strike out the Smith amendments to section 25 and report forthwith.

Mr. Parsons — The effect of the adoption of that amendment will be to restore the provisions as they were reported by Mr. Barnes' committee, that is, to leave out section 25, so that you no longer have a three-fifths provision. As the matter now stands,

the Committee of the Whole changed the provisions of the Constitution so as to require the presence of three-fifths on the passage of every bill. While it would very seldom happen, and might not happen for many years, that advantage would be taken of that provision, the time might come — and the history of legislative bodies shows that such times do come — when advantage would be taken of such provisions to tie up the majority and prevent them from doing business. As a majority, they have the duty to do and therefore should have the power to do their duty. I was in Congress, as Major Wadsworth will recall, when the Democratic minority tried to filibuster and stop business. It takes thirty-five minutes to call the roll of the House of Representatives. We had about six roll calls a day and until we had completely distorted the rules by a special rule — and it took us several days to do that — we were powerless to do any business. It is true that the majority would have the right to compel the minority to attend, but each day the minority could absent himself and the majority would have to go through this form of compelling the attendance of the minority and that takes time. So that, as a practical matter, if this three-fifths provision remains in, you extend an invitation to the minority in time of great political excitement to prevent the majority from doing business, and that, I submit, is contrary to the true principle of representative government. The majority should have the power to do business.

Mr. Sheehan — May the Smith amendments be read?

The President — The Secretary will read the amendments offered by Mr. Smith.

The Secretary — On page 5, line 7, strike out the bracket. On the same page, line 8, after the word "act" insert a bracket. On the same page, line 11, after the word "state" insert a bracket. On the same page, line 14, strike out the bracket.

Mr. Quigg — Mr. President, wittingly or unwittingly, and I have never heard him say anything that sounded to me as though it was unwittingly said, Mr. Smith has presented to this Convention the whole question of the Reed rules in the Fifty-first Congress; that is what he has done. He proposes that practically ninety persons shall be present when a certain class of bills are to be considered. Now, the Assembly being composed of 150 persons, it takes 76 to pass a bill; 76 persons must be for the bill before it can pass. That is a full quorum of the House. In the ordinance of the voters generally, and of Divine Providence, it usually happens in this body that there are about 100 Republicans elected and about 50 Democrats.

Mr. A. E. Smith — Forty-eight.

Mr. Quigg — Forty-eight, Mr. Smith says. That is how it

usually turns out in the wise beneficence of the voting public. Mr. Smith proposes that when a bill comes up and seventy-six persons are ready to vote for it, Republicans, here — some detained at their homes by illness, some neglectful of their duty, some absent for good reasons or bad reasons, but seventy-six are ready to do business — he and his following of perhaps 20 Democrats —

Mr. A. E. Smith — Forty-eight.

Mr. Quigg — But they will also be absent, some of them. He and his following can get up and march out of the Chamber, and, by neglecting to do their duty, they can accomplish more than if they stayed here and did their duty. That is the proposition. In other words, by failing to do their duty, they can accomplish a greater result than if they did their duty in its highest expression, namely, by casting their vote. Now, that was the Reed rule over again. Don't you remember how in the Fifty-first Congress there was not a very small Republican majority? Now, in Congress it was not necessary for a quorum for a majority of all the Congressmen elected to vote for a bill in order to pass it. It was only necessary for a majority who voted, a quorum being present. Now, what happened. The Republicans could not muster a quorum. They only had a few votes more than a quorum, and sickness and death, and one thing and another took so many members out of the Chamber that they could not generally muster a quorum. Before that time, and from the foundation of the government, the presence or absence of a quorum had been determined by roll call, and so all the Democrats had to do in order to beat a bill was to sit in their seats and say nothing, except for the one of them that had been deputed to vote Aye on the bill in order that he might move for reconsideration, and there they sat, and a quorum did not vote, although a quorum was present to do business.

Mr. Wagner — This bill provides that three-fifths be present. It has nothing to do with the question of voting.

Mr. Quigg — It does a good deal worse, you see; I am about to explain. Now, there, you understand, a quorum was not necessary for the passage of the bill as it is here. Mr. Smith seeks to make it worse. He is not only going to have seventy-six members present, but he is going to have ninety present, before seventy-six can vote. So you may have a Republican majority of seventy-six all ready to do business, already to vote, all that the Constitution requires for the passage of a bill, and Mr. Smith can get up and walk out before the vote is taken, with the Democrats following him, and there will be a quorum here, there will

be enough members to pass the bill but there won't be his kind of a quorum. Is that right? Is that what you are going to vote for? Mr. President, that is the most novel thing that I ever heard of in parliamentary procedure, and I am sure that the conscience of this House will not entertain that proposition.

Mr. Hinman — Mr. President, as the Chairman of the Committee of the Whole I was not given an opportunity to express myself with reference to this proposal. I wish to voice my protest against it at this time. I fear that the Committee of the Whole took a rather hasty judgment of the matter. I think when we come to consider the fact that this Convention itself has provided, in Rule 61, that a majority of the Convention shall constitute a quorum, which we have not found to be disadvantageous, which we have found to be all that should be required, that we ought not, therefore, to saddle upon the Legislature a rule which we have not seen fit to fasten upon ourselves. The Constitution provides that a majority of all the members elected to each House shall be necessary in order to pass approval upon any legislation. That is all that is necessary for the passage of the legislation. It seems to me that is all that should be necessary to constitute a quorum, a majority of all those elected to either House. Under the existing provision of the Constitution, it has been found wise to impose a little different requirement with reference to the passage of an act which imposes, or continues or revises a tax, or creates a tax, or charge, or continues or revives an appropriation. If it is deemed wise by this Convention that we should continue that rule for such matters as that, well and good; but we have provided a budget system in this Constitution in which we hope to safeguard the expenditures of the people's money. Therefore, it would seem to me that it was a wise provision of the Committee on Legislative Powers that we should have wiped out that provision in order that it might not be necessary for the desk force in the Legislature to conceive of two rules, one with reference to one class of legislation, and another with reference to another class of legislation, that was to be passed upon by the Houses. It leads to confusion at times and unnecessary confusion so long as we have provided for an official budget and are going to safeguard the expenditure of the people's money. I think that it is unnecessary for us to provide for more than a majority of all the members elected in order to constitute a quorum. I think it is worse than that. I think it is placing ourselves in the hands of the minority. When we were considering the question of special appropriation bills in this Convention a while ago we considered the advisability of providing a two-thirds vote for the passage of special appropriation bills not

covered by the budget, and we came to the conclusion that it was not wise to fetter the majority at any time, which must take the responsibility for any action that was taken by the Legislature. If that rule was found to be wise, when considering a question of special appropriations, why should it not be wise with reference to any class of legislation? I feel that we should recognize the fact that there are many occasions, with two Houses of the Legislature, when the members of one House find it necessary for them, during the procedure of their own House, to go over to the other side, to take care of their legislation which may be before the Committees of the other House. And, therefore, there are frequent times in the consideration of bills upon the order of third reading, when we may have within the capitol building a three-fifths majority. Perhaps one hundred and fifty members of the Assembly, but not more than a bare majority of them present within the chamber, and I think it would lead to many long roll calls to determine the presence of a quorum which would necessarily embarrass and harass the administration, the organization of the House, and I think we ought not to embarrass the Legislature unnecessarily when we only require that 76 votes shall be necessary in order to pass a bill. I think that we should disagree with the report of the Committee of the Whole with reference to this particular matter.

Mr. A. E. Smith — Now, Mr. President, the House very decisively settled this question before dinner. From the looks of things, something happened. I think there are some of us here that are about as much concerned about what happened and how it happened as we are about this particular amendment. There is absolutely nothing in the contention of my good friend, Mr. Hinman, from Albany, that the majority is tied up in their business. No man sitting around this circle knows better than he does that 76 men in this room can do anything; they can compel the attendance of not only 90 men, but of 150, and have ample power, and will always have it. Now, then, put that argument one side. There is a difference between this and a two-thirds vote required by the Constitution for the passage of a bill. That was a restriction on the Legislature, or on the Assembly, to pass a bill appropriating money by less votes than two-thirds. This puts no restriction on the Legislature. They have the powers, I just said, to compel a full attendance, 76 men. I believe that the rules in the Legislature all are sufficiently strong to permit the Speaker himself to do it without the use of a majority. Now, my side-partner here, if what he said was true, the argument should have been raised twenty years ago in the

Convention, when this three-fifths provision was required for the most important bill that the Legislature passes, the bill making a provision for the support of government. The present Constitution requires 90 men in their seats in the Assembly when the appropriation bill passes, and every single argument that you would make to-night against the general legislation of the Assembly could have been made with equal force twenty years ago against the adoption of Section 25, as it stands in the Constitution, because it has been made to apply to the most important legislation of the House. We were talking a little bit this afternoon and the President himself in his address to the Assembly advocating the printing of the Record, said something about the dignity of the Assembly. Now, I submit for the consideration of this Convention that to the visitor from all parts of the State who sits in that gallery or in the rear of this chamber, you could not do more to strip this body of its dignity than to have half of it empty when the important business of the State is being transacted. Making all allowances for sick men; making all allowances for men detained away from here on business; making allowances for all the men who have to be away on a given night for something that may not happen to them again in their lifetime, I submit there should never be excused from this chamber when the business of the State is being conducted more than 60 men out of a hundred and fifty. That is a very large allowance. Now, I don't like the spirit that my friend, Congressman Parsons, approaches this subject in. He comes at it like a man who is afraid of what the minority might do. You never can get any place by being afraid of the other fellow. Any man who thinks that he and his set and his party have all the virtue and all the goodness there is in the world, and everybody who doesn't agree with him is conniving to tear down the capitol and destroy the form of government we are enjoying, is never going to get any place, and the sooner he understands it the better for himself personally, and I am here to impress it on everybody's mind. I call on the men who sit around this circle who have been in the Legislature for any length of time. I will start with Mr. Hinman himself. This provision has been in the Constitution with regard to appropriation bills. Did you in your legislative experience as majority leader and minority leader ever know the minority to stay away from it to defeat an appropriation bill?

Mr. Hinman — I have known the desk to be puzzled very many times to determine whether it was necessary under this provision to have a three-fifths vote present or not. It has been

confusing to the Legislature rather than helpful, and we members of the Legislature have not even been aware that there was even such a rule, and in our ignorance of the rule, we have proceeded many times, I assume, to have passed legislation in ignorance of it, and perhaps in violation of it.

Mr. A. E. Smith — That is a lawyer's answer. It is all right, but it does not begin to answer my question. You never proceeded with any bill that you wanted to pass until you knew how many men were here, and you knew just how many of each kind was here, too. I never heard you say "Read the last section" and move it to the elected representatives of the people to decide it. Oh, no! You did just what I did, what we all do when we lead. You said, "Go on, we have our fellows here." Now, there has been a great deal said about the power that gives to the minority. You have talked about the dignity of the Legislature and about the measures advocated by the President of the Convention to provide for the printing of the Record, and the Record will show the times the minority attempts to block the business of the State, if it happens. It never has happened, and it probably never will. What are you doing by refusing to incorporate this? Just look at the weapon you are putting in the hands of the majority leader! Think of the other side of it. There is always the other side of a case, you know. There is always something else to think of. Just see how convenient and how easy it would be for this majority leader to pass the word around to 76 of the faithful, and there are always 76 of the faithful, even though there may be 90 members elected from one party — just see how easy and convenient it would be to pass the word around to 76 members of the faithful that something is going to happen on Friday, and the majority will go home, believing and expecting as they have a right to believe and expect, that in all probability nothing would happen on that day.

Mr. Eisner — The gentleman has been speaking a great deal about the power of the sergeant-at-arms of the Assembly to arrest members. I desire to announce to this Convention that if the gentleman is successful this fall, he will be in a position to arrest everybody but the coroner, or the coroner can arrest him. Word has just been received, Mr. President, that Alfred E. Smith is to receive the Democratic nomination for the office of Sheriff in the county of New York.

Mr. A. E. Smith — Mr. President and gentlemen, I will put my speech of acceptance into the Record later.

Mr. Deyo — Mr. President, I am very sure that makes some of us countrymen feel easier.

Mr. A. E. Smith — Yes, you can come to New York now, any time you like. I propose to conclude, Mr. President, by saying that all I have asked for the minority, I have been asking for my successor, and I hope the house will give it to him.

Mr. Quigg — Mr. Smith, isn't it so under the Constitution, 76 votes can pass a bill; is not that so?

Mr. A. E. Smith — Yes, 76 votes can pass a bill, but not every bill.

Mr. Quigg — How many bills?

Mr. A. E. Smith — It can pass amendments to the statutes generally, Constitutional amendments, and bills not giving away the public money or property for private purposes.

Mr. Quigg — Yes. Now, isn't it true that if there is a minority here — that if you have this provision passed that requires 90 persons to be here as a quorum, and 76 are here for a bill, and you have five persons here in a minority, more than 76, or any less than 90, you can troop them out of that door and do more by taking them out than you could if they stayed here and performed their duties in its highest sense?

Mr. A. E. Smith — No, Mr. President, that is not true, and if it was true, it would be false to this proposition. The power of this House is not only sufficient to bring them in here, but to keep them here. A close call of the House has been honored. A man cannot get out of here without a pass from the Speaker, and in years gone by even clerks have found it difficult to get by the doorkeeper.

Mr. Quigg — That is all mechanical.

Mr. A. E. Smith — That is all fact.

Mr. J. S. Phillips — I sincerely hope that the motion made by Mr. Parsons from New York will prevail, and that the bill will be left in the same position as when it came from the Committee on Legislative Powers. I know that this question has received the attention of the Committee. I never could see why this three-fifths rule which is provided in the present Constitution, or in Section 25 — why it was ever thought necessary to have a three-fifths, or to have three-fifths of the members present when the bills that are enumerated in this section should be passed. I never could see any good reason for it. My friend from New York says there are only a few bills. As a matter of fact, the general laws only require, under the present Constitution, a majority present, and, gentlemen, I believe in the principle of a majority rule. Why should you say to anybody, or to a legislative body, that a majority of that body cannot control the body, or cannot do the work imposed upon it? It seems to me it is unreasonable and I can see how a majority can, if it sees fit, in the closing days of any legislative

session absolutely obstruct the procedure and deprive the majority of its power to transact business. It is well enough to say, why you can enforce the rule, but those of you who have served in the Legislature know how difficult it is to bring a member here under a close call. You cannot have a close call continue from day to day, and, just as has been pointed out here by Mr. Hinman, in the last days of the session it will be possible for a minority to absolutely block all legislation, because ninety men are not present. I see no reason for the existence of the rule that three-fifths of the membership of the body shall be present before a vote can be taken on any proposition. There is absolutely no reason for it. If we believe in the rule of the majority, why should not a majority of the legislative body control its own actions? There is nothing more that I need say. Mr. Hinman has called attention to the various things that might happen. There is no reason for a three-fifths rule, and I hope that the motion made by the gentleman from New York will prevail.

Mr. Barnes — I trust the Convention will disagree with the report of the Committee of the Whole. As this subject has been discussed more, arguments in favor of the repeal of Section 25 accumulate. As I stated before, this provision was placed in the Constitution of '46. I am not aware whether at that time bills were even printed. They certainly were not printed and laid upon the desks three days. An appropriation bill might be passed then on five minutes' notice. That, I suppose, was the reason why the three-fifths provision was put in. Now, bills have to remain upon the desks at least three days, and this provision is absolutely useless. In addition to that, it is dangerous, and dangerous in a way that has not yet been pointed out. If the date of final adjournment has been set, the minority of this body could absent itself under this provision and make it impossible for one legislative body, the Assembly, for example, to pass any measure. The Senate, for example, might be of one political faith, and the Assembly of another — the majority, I mean. The minority could then depart and the sergeant-at-arms might not even be able to find them; in that case, the date of adjournment is set, and the minority has control. I think, upon reflection, that the Convention will clearly see that this provision will be retained as the Committee on Legislative Powers and Limitations placed it. I will not sit down without expressing some little wonderment, as well as congratulation, to Mr. Smith of New York, in the fact that the information which has come to us in regard to a certain matter has come from a gentleman who on the floor of the Assembly was an advocate and a firm and earnest believer in the principle of direct nominations at a primary to be held on the 28th day

of September. I have heard Mr. Eisner in public places, and that was his argument; the destruction of the rule of the boss would cease. I have debated it with Mr. Eisner in public places, and that was his argument — the destruction of the convention system meant the liberation of the voters of the party. Therefore, it is especially pleasing to me that Mr. Eisner should rise and tell us what the Democrats of the county of New York are to do on the 28th day of this month.

Mr. Eisner — Mr. President, I was going to ask Mr. Barnes to yield, but I do not think it will be necessary. All I know is this, that any other Democrat who wants to run in the primaries against Mr. Smith for Sheriff is at liberty to get out his petitions and he will be on the ballot without any preference shown to Mr. Smith, so far as the ballot is concerned. The only reason that I was so certain in my announcement is that Mr. Smith is so popular among the Democrats that I think any Democrat endeavoring to get the nomination would receive only his vote and the votes of those who signed his petition, and not one other.

Mr. R. B. Smith — Before the Committee on Legislative Powers and the Committee of the Whole, I endeavored to make my position in this matter clear. I am perfectly satisfied with the amendment offered by the Committee, which provides that a majority of the members elected shall be sufficient to pass any bill, regardless of how many are present, except the regular two-thirds bills. My purpose was to eliminate either the majority or the three-fifths jurat so as not to subject the Legislature to the confusion which arises in having the three jurats. I can see no use of having the three-fifths and the majority jurats in use. One proposition or the other should be abolished. I do not share the apprehension of some of my friends that a majority of the Assembly cannot compel the attendance of ninety members, but in the case of a filibuster it might delay the proceedings of the Legislature. As I say, so far as I am personally concerned, I am not wedded to the three-fifths proposition. I want to eliminate either the three-fifths or the majority jurat so that we will be relieved from the danger which we have had before and which we have experienced in having statutes declared unconstitutional by reason of an error made by a clerk of this house.

Mr. Marshall — If Mr. Parsons would amend his motion so as to restore Section 25 as it now reads, I think a very happy solution might be reached in this question. That would require three-fifths to be present at any time when an act was passed which imposed or revised taxes or which made an appropriation of money belonging to the State. It has been said in debate that there was no discussion of this subject in the Convention of 1846. It is

very interesting, historically, to know that the same discussion we have had here to-night took place at that time. I have before me the proceedings of the Convention of 1846, the Argus edition, and I read from page 829: "Mr. Hoffman (who was the chairman of the committee on finance) remarked upon the 14th section (which is the section we now have under consideration) that when it was drawn it was not known what rule would be adopted in regard to the passage of bills. The convention had since required a majority of all elected to pass every bill. This section would require, in the cases mentioned, three-fifths of all elected to be present. He desired this additional guaranty for safe legislation; and he should prefer to say two-thirds. Mr. Worden suggested that this would put it in the power of two-fifths, by withdrawing, to defeat wise legislation. Mr. Hoffman replied that the house from which they retired would deserve infamy if it did not imprison them for it. He had no doubt of the power of the two houses over its members, and he never would have the least hesitation in exercising it. Mr. Marvin approved of the principle of requiring three-fifths to be present on such questions as these." Thereupon a vote was taken and the provision was adopted by a vote of 77 to 9, and among the great names of those who voted in favor of the provision were Charles O'Connor, Samuel J. Tilden, William B. Wright, Mr. Loomis and others. So far as the financial bills, appropriation bills are concerned, under the budget system they have to be passed in the early stages of the Legislature, and there is no difficulty there to have a quorum of three-fifths. As to other legislation, general legislation, I agree entirely with those who believe that it would be unwise to extend the three-fifths rule to that class of legislation, but let us preserve this safeguard with regard to legislation, which leads to the imposition of taxes or the appropriation of public moneys.

Mr. Olcott — Something did happen when we adjourned and that was that some of us got together and said that Al. Smith had put another one over on us. There used to be a play called "Too Much Johnson". This measure suffered from too much Smith. We are used to the strength that Ray B. Smith exhibits on the other side of the House, and we are used to the strength that is exhibited by A. E. Smith on this side. They two got together this afternoon and hypnotized, it seems to me, the majority into agreeing to the proposition as it now stands. I do not agree with Mr. Marshall that there is ever a time when it is necessary to have three-fifths in the House. I do not think it a far cry to the possibility of some legislation, even though it were of a financial or tax sort, being defeated or held up, and the House held up for a long time by the two-fifths absenting themselves, especially under the present rule that three days' notice

must be given of the passage of legislation. I have failed to hear even from Mr. Marshall, whose wisdom we all welcome, why a majority should not rule on the most important propositions. I do not believe that it would often occur that the small tactics that have been spoken of with fear by people speaking on the side of the measure would be made use of, but it might occur at a most important time; to say that the sergeant-at-arms can be called in to bring in recalcitrant members, while true, is to admit, that measures of that sort might have to be taken frequently, which surely should never have to be resorted to. It seems to me, as I stated in the Committee, that this entire provision, Section 25, should be stricken out, and I hope that this House will support Mr. Parsons' amendment, which makes for that end.

The President — The question is upon Mr. Parsons' amendment to disagree with the report of the Committee of the Whole on No. 829, to restore the amendment reported by the Committee on Legislative Powers in respect to Section No. 25.

Mr. Parsons — A rising vote, Mr. President, if you please.

The President — All in favor of the motion will rise and remain standing until counted. The members will be seated. All opposed will rise. The motion is manifestly carried. The question now is upon agreeing to the report of the Committee of the Whole as amended. All in favor will say Aye, contrary No. The report is agreed to.

Mr. Rodenbeck — Mr. President, may I present another report of the Committee on Revision and Engrossment.

The President — The report will be received. The Secretary will read.

The Secretary — Mr. Rodenbeck from the Committee on Revision and Engrossment to which was referred Proposed Constitional Amendment introduced by Mr. Dow, No. 852, Introductory No. 708, reports same examined, found correct and properly engrossed.

The President — All in favor of agreeing to the report will say Aye, contrary No. The report is agreed to. The Convention will return to Committee of the Whole for consideration of the pending special orders. Mr. Hinman will resume the Chair.

(Mr. Hinman resumes the Chair.)

Mr. J. G. Saxe — Mr. Chairman, might I ask for the benefit of the Committee that the Clerk read the special calendar of the evening so that we shall know the bills that are to come up?

The Chairman — Will the Secretary kindly read the calendar of special orders?

(The Secretary reads the calendar.)

The Chairman — The Convention is in Committee of the Whole for consideration of 755, General Order No. 26, from the Committee on Governor and Other State Officers, to amend Section 1, Article IV of the Constitution.

Mr. Rhees — The Committee on Governor and Other State Officers finds itself very much cheered by the news which we have from our Chairman, and yet very greatly embarrassed by his absence, and it falls therefore to another member of the Committee than the one who had charge of the deliberations of the Committee and of preparation of the amendment, to present the amendment for your consideration. The proposals are clear and simple. They are three, with a supplementary consideration as to the time at which the proposal should take effect. The major suggestion of the amendment is that the term of the Governor should be changed from two years as at present to four years. The Committee asks this Committee of the Whole to consider the fact that in making this proposal it is not suggesting an innovation. Some 27 other states of the Union elect their Governors for four years, and amongst those states are such important ones as Illinois, Indiana, Pennsylvania and Virginia. This State has not always maintained a two-year term for its Governor. Prior to the Convention of 1894 the term of the Governor was three years. At that time the change was made from three years to two years in order to make it possible for the election of Governor and the election of municipal officers to take place in different years. I have not heard that there was dissatisfaction with the three year term of the Governor at that time. Moreover, we have had recently before us the object of the chief municipality of the State, in itself a very large political unit, changing from the term of two years for its chief executive to a term of four years for that executive, for the same reason that persuaded the Committee to propose to this Convention that the term of Governor should be made four years. The difficulty with a two-year term for the Governor is that the business of the State is so large, its undertakings are so complex, that a man coming into the office of Governor has to spend the larger part of the first year of his incumbency of the office in becoming well acquainted with the task to which he has been elected and only about the end of the second year of his service, that is under the present conditions at the close of his term, is he in a position most effectively to serve the State. Moreover under present conditions he is so occupied during the first year of his term in getting the machinery of the government in operation that he does not give the fullest attention to the detail of his duties and he is

often so occupied during the second year of his term in making the plans for a possible re-election that the State loses the advantage of his entire attention to the work for which he was chosen. There is another feature which leads the Committee to recommend that the term of the Governor be extended from two to four years. We have by the action of this Committee of the Whole on last Monday night proposed a reorganization of the government of the State in accordance with which the principal civil executive departments of the State are made subject to the appointment of the Governor, and the men who are so appointed are to hold their office during his pleasure. Now that provision if the term of the Governor is to remain as a two-year term may involve a somewhat serious disorganization of the work of the various departments of the State government. The different departments which have been affected by this proposal which the Committee of the Whole has passed on with a recommendation to the Convention, are the following: The attorney-general is now elected for two years; so are the comptroller and the treasurer. That would not make, therefore, a serious consideration in connection with the proposal which we submit. The board of tax commissioners which, according to our proposal, will be the head of the department of taxation, are now chosen for terms of three years. The superintendent of public works is now appointed for a term which will expire with that of the Governor. The state engineer and surveyor is elected for two years. The commissioner of highways is appointed for five years, and the architect is appointed to serve at the pleasure of the governor. The commissioner of health, who will be one of the heads of the departments, to be appointed by the Governor, has now a term of six years. The commissioner of agriculture has a term of three years. The superintendent of banks and the superintendent of insurance each have terms of three years. The industrial commissioners have terms of five years; the superintendent of elections four years; the commissioner of excise, five years.

It would appear, then, that a great many of the heads of the departments of State government at the present time are appointed or chosen for terms longer than the term of the Governor. The reason for this can only be that experience has indicated that it is important that the heads of these very significant departments should be able to serve in their positions for a longer period than two years. We therefore believe that the election of the Governor for four years, carrying with it, as it will, a tenure of four years for the heads of departments, which

he will appoint, and who are responsible to him, will secure a greater efficiency of administration, a greater continuity of policy, and therefore distinctive advantage in the conduct of the business of the State. We have felt that it is essential that the heads of these departments should have their terms terminate with the term of the Governor in order that there may be perfect responsibility fixed upon the Governor. That being so, the Committee is convinced that it is desirable that the Governor's term should be made long enough to insure an effective accomplishment of the aims which he sets before himself as the distinctive features of his administration as Governor. Secondly, the Committee recommends that the Governor, chosen for a term of four years, be made ineligible to succeed himself.

The reason for that is, that, as I intimated, experience has shown that with the short term which we now have, Governors are very much occupied in the second year of the first term, and which may be their only term, in making plans for a possible re-election. This constitutes a serious distraction of attention from the conduct of the business for which they were elected. We believe that a term of four years and ineligibility for re-election will give to the State a single-minded service which the people are unable to procure, so long as, while conducting the State's business as chief executive, that chief executive is ardently interested in projects for making sure his own return to the office in which he is serving. It is because we think that the State deserves that kind of single-hearted service, that whole-souled attention to the business to which the Governor was elected that the Committee believes that it is desirable that the Governor should not be eligible to succeed himself. The other proposal which the committee has submitted for your consideration will be found in the last sentence of the bill. This sentence is incorporated in the new form of section 1, being taken from the present section 4 and modified. It reads: "The Governor shall receive for his services an annual salary of twenty thousand dollars, and there shall be provided for his use a suitable and furnished executive residence. It seems hardly necessary to do more than call the attention of the committee to the fact that at the present time we are asking the chief executive of the State to conduct his official life on a scale which is entirely impossible within the limits of the salary which the State pays.

We do not believe that it will be regarded as decent public policy to make it necessary for the people of this State in selecting a candidate for Governor to choose the man who is so placed

that out of his own private means he can supplement the salary which the State pays, in order to be able to lead the life which the people of the State demand. Although it might not be delicate to bring before the Convention facts and figures — it has been made very clear to the Committee out of the experience of recent Governors that it has been wholly impossible for them to serve the State and live within the salary which the State pays. We know that not long ago the proposal was submitted to the people that the Governor's salary should be increased, and at that time the people declined to adopt the amendment, but we believe that there were circumstances connected with that proposal which do not now exist, and that it is reasonable to expect that the people of the State are themselves sufficiently self-respecting to be unwilling to ask of any citizen chosen to the office of Chief Magistrate of the Commonwealth, that he shall live and do their work at his own expense. The Committee, therefore, confidently recommend that we propose to the people that the salary of the Chief Executive of the State shall be increased from ten to twenty thousand dollars. Now, there is one other change which is suggested in this proposal, and that is in the second sentence — the first sentence printed in italics, "The Governor elected in one thousand nine hundred and sixteen shall hold his office for two years. Thereafter the Governor shall be elected for a term of four years, and shall be ineligible to succeed himself." The reason for choosing 1918 as the time when this proposed four-year term for the Governor shall go into effect is that it is of the greatest moment, that, so far as possible, the decision of questions of State interest should be divorced from the consideration of questions of national interest. In 1916, the year when the next election for Governor will be held, there will also be an election for the President of the United States. If we were to make this provision take effect in 1916, that would insure the continued identity of period for the election of Governor and the election of President. Therefore, it seemed wise to the Committee, because of their conviction of the importance of divorcing, so far as possible, State politics from national politics, to recommend that the first Governor chosen under this new Constitution should be chosen for the term of two years, and in 1918 the people should choose their Governor to serve for four years. The Committee commend this article to your favorable consideration, believing that it is a very important supplement of the proposal on which you acted favorably Monday night. It may be that it will serve, not only to secure to the people of the State a responsible government,

but also a government to which responsibility is committed for a long enough time to enable that government to prove that it is serving the State to the State's satisfaction and to the State's advantage.

Mr. Dykman — This bill was reported weeks before the bill providing for the reorganization of the State government, the general reorganization. It was first reported because a great number of the committee, if not all, hoped to have an expression of the Committee of the Whole at least upon this proposition, before the other should be reported out from the Committee on Governor and Other State Officers. I think more than a majority of the committee would have hesitated very much to have reported out the bill giving the great powers to the Governor if they had not confidently expected that this companion measure — or, we hope, it would be a predecessor measure — would have been adopted. Now, we find on our examination that the Governor's term up to the year 1821 was three years. That then it was reduced to two years, where it stayed until 1876. Beginning in 1876 and until 1894, the term was three years; that in the Convention of 1894, in the Committee of the Whole the term was lengthened to four years, and the discussion ranged about the old term of three years, and two years was finally chosen rather than three years to prevent the city election and the State election occurring in the same year; and a very wise delegate in the Convention of 1894, stated on the floor of this Chamber that the decrease or the shortening of the term was a sacrifice of the State to the city. We find, as Doctor Rhees has stated, that 24 states had terms of four years for the Governor; that 22 states had two years; and we were convinced of the wisdom of those members of the Convention of 1894 who pleaded for a lengthening of the term to four years; especially were we convinced of this when we were putting upon the Governor almost a superhuman task, a task to test the greatest ability of the greatest men this State has produced and put in the Governor's chair. We thought this man, of whom we are asking so much, ought to have a sufficient period to inform himself of the task that we had put before him. We thought that while he was devoting his energies to this work of preparation, he ought not to be distracted by politics. And another reason for the rule was suggested. We thought that throughout his term that he should not have or be put under the temptation of building up a machine; that he should be ineligible to succeed himself; that the State would be better served if he was not distracted by politics, nor under the temptation to build up a personal machine; that if we had all the ability of the ablest man

that could be inducted into the office, that that would be to the advantage of the State of New York, and that our chances would be infinitely greater of getting the kind of services the State of New York must have if this scheme is to succeed, and if throughout the four years of the term the Governor should have no other thought than to serve the people of the State of New York.

Mr. J. S. Phillips — Mr. Chairman, I was going to ask the gentleman this question. He states that in 27 states they have the four year term.

Mr. Dykman — I did not say 27 states. I said 24 states. Twenty-four states have the four-year term, and two territories, the Hawaiian Islands, Alaska and Porto Rico I understand, or I mean three territories, and I did not count those three.

Mr. J. S. Phillips — Well, I am not particular whether it is 27 or 24. The question I was going to ask whether or not you knew how many of those states made the Governor ineligible for re-election.

Mr. Dykman — I cannot answer that.

Mr. Phillips — Are there any?

Mr. Dykman — I cannot answer that. I don't remember. New Jersey has a three-year term, but I am — the question is asked me whether any of the four-year terms, as I understood him — any of the states have — perhaps Mr. Wickersham —

Mr. Wickersham — I may answer this by referring to the Index Digest of State Constitutions, which has been prepared and furnished the members, and I read in that, that a number of the states — In New Jersey, the Governor is eligible for three years after his term of service has expired. In Kentucky and West Virginia he is ineligible for four years after the term for which he was elected; in Delaware, not to be elected for a third time; in Georgia, ineligible for re-election after the expiration of second term for a period of four years; in New Mexico, ineligible to hold State office for two years after serving two consecutive terms; in Indiana ineligible more than four in any period of eight years; in North Carolina, ineligible more than four in any period of eight years "unless office cast on him as lieutenant-governor or president of the Senate"; in Tennessee, ineligible more than six in any period of eight years; in Oregon, ineligible more than eight in any period of twelve years.

Mr. Buxbaum — Mr. Chairman, I have sent to the desk a Proposed Amendment to this bill which in effect leaves the proposed article the same as it was before amendment in so far as it recommends the increase in the term of the Governor. In other words, it leaves the term two years. I suppose some of the

friends of the Short Ballot Association will soon produce a letter which I sent to them in 1914, showing that I then declared in favor of a four-year term for the Governor. When I wrote that letter I did not know that the Committee on Governor and Other State Officers would recommend the increase in the power of the Governor to the extent that that proposed article which was recently adopted does. I believe that a good Governor will have no difficulty in being re-elected to succeed himself as experience has shown. Our experience in this State has shown that the people favored a two-year term for the Governor rather than a three or four-year term. If the Governor has given a good administration to this State he will not fail of re-election, and if he is a bad Governor, as we have had in recent years, if his administration is not such that it recommends itself or commends itself to the approval of the people. we ought to be able to get rid of him in due time. What Mr. Dykman said in regard to the task that the Governor has before him during his term of administration, I will say that his most difficult task is that of making the appointments, and that confronts him at the outset. When he has selected good men for the department heads, as he is permitted to do under the article which has recently passed approval, then his main work is done. I was particularly influenced by the fact that the concurrence of the Senate in the appointments made by the Governor so far as all the heads of departments are concerned, with the exception of the two heads who are elected, was removed from the article. I recommend the adoption of the amendment which I have sent to the desk.

The Chairman — The Secretary will read the amendment offered by Mr. Buxbaum.

The Secretary — By Mr. Buxbaum: In line 4, page 1, strike out the brackets and the period. Also strike out all words in lines 4, 5, 6, and 7, which are in italics. Strike out the brackets in line 5.

Mr. Austin — Mr. Chairman, I earnestly hope that the committee amendment will prevail in its present form. It seems to me that we have all grown in recent years to realize that a public servant becomes more valuable the longer he stays in office. That is especially true with reference to legislative representatives. It certainly is true with reference to administrative officers. It is true with reference to an executive. But when we come to the Governor, we must realize under our form of government that somewhere, some time, there must be a limitation on the time that the executives shall serve the State, because we are a democracy, and we do not wish to have a permanent rule, and so we have recognized that no matter how competent.

no matter how good the executive is, the time must come when his term of service, his continuous term of service shall cease. Now, as a practical proposition how many Governors have we had who have ever served over four years? Maybe one or two, but certainly their number has been very, very few. I could not say, offhand, whether there have been any. Hill is the only one, I am now informed, Governor Hill. So, as a practical matter, during the history of this State, Governors have never served more than two terms, and this is what we propose here, a double term. Now, we have not had many bad Governors, Mr. Chairman. We have had some that were not so efficient as others, and I firmly believe, that if those who have been less efficient had been permitted to serve a four-year term they would have been more efficient in the latter part of the term than they proved to be in the first. We cannot always expect to get perfect men in public office, and if we get men in the office of the Governor, or any other office, who are really bad, there is a method for removing those officials, and it has been used in this State. Personally, I am very much in favor of increasing this term to four years, because I think it will promote efficiency and especially when we consider the other legislation which has been adopted by this Convention, and which most of us, at least, hope will be approved by the people this Fall, and I see no danger in increasing the term. I think it will promote efficiency, and I think it would be very unwise to pass the provision without a prohibition against re-election.

Mr. Schurman — Mr. Chairman, I can answer the question raised by Mr. Austin as to the period of time which our Governors have served. If you will go back to Governor Seward, who held office in 1838, you have eight Governors following one another, whom the people did not choose to re-elect. Each one served for one term only. After that, you have four Governors, Edwin D. Morgan, Horatio Seymour, Reuben E. Fenton, John T. Hoffman, one serving one term, the remaining three two terms. That brings you up to the year 1868, and from the year 1868 to now you had in this State seventeen Governors, and the people have re-elected Hill, Odell, and Hughes. The people have refused to make the term longer than two years or three years, when the term was three, in the overwhelming majority of cases and it is now proposed that the Constitution shall be laid before the people, in which they shall pledge themselves to keep Governors for four years. Now, Mr. Chairman, I occupy a somewhat peculiar position in this debate. I cannot, with my experience as a minister, reconcile myself for one moment to the position occupied by my friend, Senator Brackett, and those who

think with him. I am persuaded you cannot have efficient administration without unity of administration. In this State we have our executive department divided among a number of officers, each occupying a circumscribed sphere, and the Governor who occupies or happens to occupy a larger sphere, with no control over his associates. Good administration under those circumstances is impossible. Good administration implies unification and the subordination of inferior officers to a chief executive who shall be held responsible for results. For that reason I voted for the other bill, and advocated the other bill, which was laid before the Convention by the Committee on Governor and Other State Officers. But I said to the Chairman of that Committee, Mr. Tanner, some weeks ago, that, while I was with him and should support him in that bill, it would be absolutely impossible for me, with my convictions, to support him in this bill. That brings me to what I consider, gentlemen, the effective, and the very effective point made by Senator Brackett in the previous discussion, namely, the rights and liberties and sentiments and opinions of the people. The government, the administration of private business, whether money-making corporations or non-money-making corporations, like universities, with any amount of men who hold office for a long time, and the authorities are willing to have them hold office so long as the results are satisfactory; but, in the case of the State we are concerned not only with administration, but we are concerned with the will of the people, and I defend and am ready to go on the stump and defend the action which this Convention has taken in unifying the executive department of government on the ground that it promotes efficient administration, and if you will leave the executive term as it now is we can defend it victoriously because every two years the people will be able to call their chief executive to account, if he is not satisfactory, dismiss him; if he is satisfactory, re-elect him. And that, Mr. Chairman, is what is done in all the governments of the world. No government thinks merely of efficiency. It thinks of the will and the desire and sentiment of the people. Hence, in the cabinet system which prevails in European countries an administration may be in office one year or three years, as long as it retains the confidence of the people.

We have a fixed term for our executive of two years. I was very much impressed when I first heard my good friend, Dr. Rhees, presenting the fact here to-night that States like Illinois, Indiana, Pennsylvania and Virginia have the four-year term for Governor. So they have, but every one of them has a four-year

term for the Senate, and if you look at the printed list of the terms of Governors which has been circulated, you will find that, with two exceptions, the terms of the Governors are either equal in length to the terms of Senators, or are shorter terms than the terms of Senators. Furthermore, here is another danger. I say that if you introduce this term — and I am as confident, gentlemen, that the prediction I am going to make will be fulfilled as I am of the certainty of any event — the people of this State are going to run the government of this State as they run the governments of the civilized world. You deprive them of calling their chief executive to account at least once in two years, and they will insist on the recall. I suspect that the gentlemen on the committee have not observed that, while there are 22 states, as they say, in which the Governor has a term of two years, and 24 states in which he has a term of four years, the recall has been resorted to much more frequently in the latter group than in the former. In the latter group, the group where Governors are chosen for four years, you will find such states as Arizona, California, Louisiana, Nevada, Oregon, Washington, and I think, New Mexico, as the result of the vote in the last election, although I am not positive about that, where the recall has been invoked; whereas, in the almost equal number of states where the term is two years, there are only four with the recall, Colorado, Idaho, Kansas and Michigan. One thing more, Mr. Chairman. I hold in my hand a list of all the states which have a chief executive chosen for four years, and after each one the date when this term was adopted. I have discovered that in nearly every case the term of four years was fixed long ago. For instance, in California they adopted the four-year term in 1862. In Delaware they had the three-year term in 1776 and continued until 1831 when they adopted the four-year term. In Florida they adopted the four-year term in 1838. In Indiana they started in 1850 with the three-year term, and in 1861 they went to four years. In Kentucky they started in 1792 with the four-year term and have continued it until this time. In Louisiana they started in 1812 with the four-year term. In Maryland they started in 1776 with the three-year term and in 1851 went to the four-year term. In Mississippi they started in 1817 with the two-year term and in 1868 adopted the four-year term. In Missouri they had the four-year term in 1820. In North Carolina, in 1868, and so on through the list. It was an old institution in those states. You propose to introduce it here where it will be entirely new.

Mr. Quigg — Since the day of the Clintons only, I think,

eight Governors of this State have even been re-elected. The fact of the matter is that, except in the cases of our greatest men, after a Governor has served two or three years the people are content to be rid of him, and that is true of the Governors of both parties and all parties. Mr. Chairman, I have tried sincerely and earnestly in this Convention to cast my vote with a view to the success of the instrument when we go to the polls. This matter of salary, I should think, would appeal to us all. We are certainly willing that he should have a fair salary, but when it comes to lengthening his term you bring up the other question we have recently decided. You bring it up again because you are now cinching the horse harder still. Since Mr. Root's speech I have tried to bring my mind around to the point where I could acquiesce in the vote that is going to be cast on the article for the Governor and other State Officers. I have tried to do it, not only because I want to agree with the judgment of the majority here and support this Constitution with my constituents, but because I have a certain notion of its destiny and I should like very much to support that proposition if I could. Here is what happened. When the test vote was taken on that bill it was positively demonstrated that it had been passed, that it succeeded here without a majority in favor of the principle of the bill. It has been widely printed that my experience enables me to know invisible government when I see it. Yes, and I know the features of some other things when I see them. I know a dicker and a deal when I see it. I know that that bill was passed, getting the scant majority that it got on the test vote, because the committee in charge of the bill surrendered the principle of it, surrendered their convictions with regard to it in accommodation of the ambition of the Comptroller of this State. I admire him. I admire his success. I admire the way that he played his handful of pawns against the kings and queens and bishops and knights and castles of this Convention. But all that is illuminating to the people, all that will create a prejudice against entrusting all this power to the Governor, whose term you are now proposing to lengthen. Gentlemen, it is true that the main source of the people's information is the newspapers. It is also true that they are supporting the views of Mr. Root and that they are supporting this proposition of the so-called short ballot, but up to the present time they have concealed from the people what it really means, that is, that they are going to have more to pay and less to say. The newspapers are not the only source of information in this country. Mr. Chairman, there is an immense amount of truth that goes around this world

by word of mouth. Sooner or later, it may be before this Constitution comes up to be passed upon, the people will get the sense of that bill, that it means the entrusting of practically all power to the Governor. Can you afford at the same time to extend his term? Can you afford at the same time to give him four years? You can say that he cannot be re-elected. No, but he can fix up all kinds of things with all of that power in four years. He can certainly determine his successor. He could even determine his successor if he thought it was going to be a successor in another party, with the power that bill gives. I warn you, gentlemen, not to do it. We did a foolish thing last night. There was no sense in not putting that court review in the Home Rule Bill. It would not have made a particle of difference. I admit it is legislation, but what did Mr. Bayes say here this afternoon? A very keen and clever thing. He said that every Constitution is loaded with legislation and growing bigger and bigger all the time, also because you see we are afraid to interfere with language that has already been used and interpreted and considered by the courts. The result of it is that the Constitution is growing and that we are doing things all the time that load it down and make the people dread it, and fear it. We might have put in that additional piece of legislation with regard to the court review and not have led thirty or forty thousand men to believe that we were interfering with them, when as a matter of fact we were not.

The Chairman — The gentleman's time has expired, I regret to say.

Mr. Barnes — I was not surprised on hearing the report of the Committee on State Officers by Mr. Rhees; I was astounded. I had no more idea that this proposal for a four-year term for the Governor would be seriously taken in this Convention after the powers in relation to the budget and in relation to the classification of the government of the State had been entrusted to him than I had that we would adjourn last week. It seems to me incredible that this Committee would push another innovation upon the electors this fall if they desired to pass those things which they already recommended. From the beginning, and before this Convention assembled, I have been a very earnest advocate of a State budget. I had been led to support the report of the Committee on Governor and Other State Officers because I was not sure that the atmosphere that hung about it was really fundamental with it, and that, as a plan of responsible government, it was entirely indefensible, but if it comes to be a plan of taking away from the people of this State the

election of their Governor every two years, it carries against it all of the criticism which Senator Brackett made last Saturday. I cannot believe that this Convention will think of extending this term to four years, nor do I think it possible that the Convention will introduce this ineligibility clause, making the Governor not responsible but irresponsible. We are talking about establishing responsible government, and then refuse the right of re-election? I sometimes wonder at the processes of men's minds. This proposal itself is not overstrong. I mean the one we have passed. But if you attempt to load it down with a four-year proposal, and ineligibility, I don't believe your action will meet with approval. I am not discussing this from that empirical angle, but inasmuch as it has been advanced largely from that angle it must be so considered. When you are entering upon an experiment of this character, the outcome of which you cannot foretell, which is said to be the destruction of invisible influence — it may be its resurrection. It may not be. We have a government of men. Who is this man to be, is the story. I think you are in very grave danger, gentlemen, if you pass this bill which has been presented by the Committee on Governor and Other State Officers.

Mr. Stimson — Mr. Chairman, there is one answer to the consideration of the very careful argument Dr. Schurman made in reference to the historical attitude of the people of the State toward their Governors in the past, that I do not believe that the doctor could have considered, and yet it is almost a necessary consequence of the course that we have pursued in this State. The evident reason why a Governor in the past has not been chosen to succeed himself may well have been the fact that he was not given a fair show in the time at his disposal to make good. If we look at corresponding history in other parts of this nation, we will see that that very fact is borne out. It is so common that it has become a truism that in our national government an administration which is elected by any party will suffer a reaction at the elections which come after the first two years. It has become almost inevitable for an administration elected in 1900, say, to suffer a very serious loss of prestige, amounting very often to a loss to the house of representatives at the end of its first two years, and yet at the end of four years the reverse has been so common that it has become an almost equal commonplace that a President is given a renomination and very often a re-election at the close of his first term. The truth of the matter is borne out by what we conceive must be the result that in the growing increase of the complexity of the business of

managing a State as large as this — it is growing more or less all the time — a Governor has no opportunity to make good in the time which we have hitherto allowed him. He comes into office with the "Hurrah" of the campaign, the promises and the shoutings and the assertions that take place during that period of excitement and it is bound to be followed and always is followed by a slump. The realization drops below the expectation, and unless that man is given time to work out and work through that slump and see what he can do with the requisite amount of time and the difficult position he is in, we are in a constant state of turmoil, like the old woman in the story who began eating the apples at the wrong end of the barrel where they were at their worst; we are always eating at the worst place, because we do not give the person on whom the responsibility rests, an opportunity to make good. Now, so far from the steps which have been taken operating in my mind as a reason for not going further, if it be possible I very much fear that the failure to give an adequate opportunity to acquire the necessary experience to make good will utterly, I won't say utterly, but will greatly impair the success of the new powers and the new machinery that this Convention is adopting. Why, the more complicated the financial affairs of the State become — you will remember the very expenses have increased sixty per cent. in thirty years; the more numerous that these offices in the State government become — and they have increased in twenty years from forty to one hundred and fifty — nearly four hundred per cent., the more necessary it is that the man who is to be vested with the responsibility of running them, of preparing the budget, preparing the financial affairs of the State, shall have an opportunity to reach his job and do it, and the trend of experience all through the State shows that along with this growing complexity the states are turning to giving their Governors longer terms. Doctor Schurman, in those statistics, as I read them, the trend is in favor of lengthening the term of the Governor. I find in fifteen cases the terms have been lengthened whereas in only six have they been shortened. I find the latest case of all, which was in Alabama, where the chief executive has been given a four-year term. So it is not a matter of past history. The trend of democracy is the other way.

Mr. Baldwin — Mr. Chairman, I quite agree with my friend and fellow member of the Committee on Governor and Other State Officers. I had the privilege of sitting with Mr. Stimson throughout long arguments and I was much impressed with the big men that came before us, representing big interests and the

trend of their argument. The trend was all one way. The trend was to lengthen the term; to the centralization of all power; the trend was the same thing that was pointed out in business life, in the combinations of large business, to the very thing against which the people of this country are rising in rebellion. This trend that we have got in this Convention is the trend that is significant in all our affairs. Now, the men who voted for this and argued for it before our committee, who with eloquent words pointed out the advantages of it, are the very ones who can see how in a large corporation the president is always re-elected. Why? Because by the combination of power with a few favored ones, he takes possession of the great business interests and because of the power crowds himself upon the minority stockholders — and this is the same principle they would like to inject into our government. The principle is wrong. Democracy has got two weapons of defense; one is the ballot and the other is the frequent election. This scheme takes away both of those, or rather I should say impairs the first and destroys the second. Mr. Chairman, let us see what this would do. The real short ballot program, because this is just a part of it, you know, the real short ballot program would say only elect one man. That is all. The people shall not have anything to do with it. Then put in the second — elect him for four years. Why not make it ten? Now, that is against the principle of representative government. Mr. Chairman, I can see that I cannot finish what I want to say on this matter within the time limit. I have served four months on this Committee, and I have thought a great deal on the subject and I want to ask the indulgence of the committee in reading into the record what I said in my minority report to the committee on this bill. I simply said this: "The chief function of the Governor is the administration of the business of the State. If he does it well, he should be re-elected. If he does it badly, two years is long enough. The people demand and should have a close relation with their chief executive. If you take away the frequent election, you must grant the antidote for the long term — namely, the recall." It will come, gentlemen, just as surely as the dawn will follow the darkness. If you put this through we should put an amendment for the recall in here because it would be a crime for us by an act of this kind to saddle the people of the State with an inefficient Governor for four years with all the power you intend to give him.

The Chairman — The time is about up, Mr. Baldwin.

Mr. Foley — Mr. Chairman, I wish to offer an amendment.

Mr. Wiggins — I wish to offer an amendment, Mr. Chairman.

The Chairman — The Secretary will read the amendments in the order in which they have been presented.

Mr. Griffin — Mr. Chairman, I want to introduce an alternative amendment, the amendment to be read only in event of Mr. Buxbaum's amendment being defeated.

Mr. Unger — Has the time limit for debate expired, Mr. Chairman?

The Chairman — The time limit has expired for debate.

Mr. Wiggins — I regret very much that I cannot put a nail in this.

The Chairman — The Secretary will read the amendment offered by Mr. Buxbaum.

The Secretary — By Mr. Buxbaum: Page 4, line 1, strike out all brackets and period; also strike out all the words in italics in lines 4, 5, 6, 7, and strike out all brackets in line 5.

Mr. Coles — Mr. Chairman, would it not be well for all the amendments to be read before we vote upon the first one?

The Chairman — Is there objection to reading all of the amendments that have been offered before voting on any of the amendments?

Mr. Wiggins — I object. It may not be necessary after we have passed on that first one.

Mr. Latson — Mr. Chairman, may we have read the one we are about to vote on?

The Chairman — The regular order is to read the amendments in the order in which they are presented.

Mr. Wiggins — I will withdraw that one, Mr. Chairman, because I find there is only one section.

Mr. Wickersham — Mr. Chairman, I object to departing from the rule. I think we will get along better to follow the rule.

Mr. Coles — Mr. Chairman, we have always had the amendments read as handed up to the desk. We have not had these read, thus far, and I think it only fair to have all of the amendments read before we vote upon any of them.

Mr. Wickersham — Mr. Chairman, my objection was not to reading the amendments, but to voting upon them except in the order of their presentation.

The Chairman — The rule of the Convention is that when the time for debate has expired the amendments shall be acted upon in the order in which they have been presented. I understand there is objection to reading the amendments.

Mr. Wickersham — No, Mr. Chairman, I did not object to the reading.

Mr. Stimson — I think it will add greatly to the enlightenment of this body if we could have them read.

The Chairman — Without objection the clerk will proceed to read all the amendments before we act on any of them.

Mr. Wickersham — May we have Mr. Buxbaum's amendment read again?

The Chairman — The clerk will read Mr. Buxbaum's amendment again.

The Secretary — By Mr. Buxbaum, page 1, line 4, strike out the brackets and the period. Also strike out all words in lines 4, 5, 6 and 7, which are in italics. Strike out the brackets in line five.

Mr. Clinton — Mr. Chairman, we cannot hear the amendment over here at all. I ask that order be preserved. It is not the fault of the secretary; it is the noise and confusion.

The Chairman — The Committee will be in order. The secretary will read the second amendment.

The Secretary — By Mr. Foley. Page 1, line 7, after the word "himself" insert "the governor shall be subject to recall at any time after the expiration of one year on a vote of the majority of the electors of the State. The Legislature shall enact proper laws to carry this provision into effect". By Mr. Wiggins: Page 1, lines 5, 6 and 7, strike out the words "thereafter the governor shall be elected for a term of four years and shall be ineligible to succeed himself." By Mr. Schurman: Strike out the words in italics and all brackets in lines 4, 5, 6 and 7, on page 1; also the period in line 4, and the semicolon within the brackets on line 5, same page. By Mr. Barnes: Strike out all after the enacting clause. By Mr. Griffin: Page 1, line 4, and after the word "Governor" add the words "the Lieutenant-Governor" In line 6, strike out the word "Governor" and substitute the word "they". Line 7, strike out the words in italics "to succeed himself" and substitute the words "for re-election". Line 7, put the words "a Lieutenant-Governor shall be chosen at the same time and for the same term" within brackets. That is, lines 7 and 8. By Mr. J. S. Phillips: Page 1, line 6, strike out the words "and shall" at the end of the line. In line 7, strike out the words "be ineligible to succeed himself." By Mr. R. B. Smith: Amend the title as follows: Strike out "section" and insert "sections". Also, after word "one" insert "and four". On page 2, after line 6, insert "section 4 of article IV of the Constitution is hereby amended to read as follows: Section 4. The Governor shall be commander-in-chief of the military and naval forces of the State. He shall have power to convene the Legislature, or the Senate only on extraordinary occasion. At extraordinary sessions no subject shall be acted upon except as the Governor

shall recommend for consideration. He shall communicate by message to the Legislature at every session the condition of the State and recommend such matters to it as he shall judge expedient. He shall transact all necessary business with the officers of the government, civil and military. He shall expedite by such measures as may be resolved upon by the Legislature and shall take care that the laws are faithfully executed".

Mr. Schurman — It would seem that the resolutions presented by Mr. Buxbaum and by myself, while varying slightly in phraseology, are altogether identical in substance. I, therefore, withdraw my amendment in favor of Mr. Buxbaum.

The Chairman — Without objection, the amendment offered by Mr. Schurman will be withdrawn.

Mr. Wiggins — The same thing applies to the amendment suggested by me, the object being the same as in the other two.

The Chairman — Without objection, the amendment offered by Mr. Wiggins will be withdrawn.

Mr. R. B. Smith — Mr. Chairman, I think the Secretary neglected to read the brackets in section 4; in other words, the last sentence of the Proposed Amendment is taken out of section 4 and from a bill drafting point of view, if this was adopted it should be to amend section 4 by striking out that matter.

The Chairman — The Secretary will read.

The Secretary — At the end of the matter read in brackets "He shall receive for his service an annual salary of ten thousand dollars and there shall be provided for his use a suitable and furnished executive residence".

The Chairman — The question occurs first on the amendment offered by Mr. Buxbaum.

Delegates — Will the amendment be read again?

The Chairman — The Secretary will kindly read again the amendment offered by Mr. Buxbaum, so we may know precisely what we are voting on.

The Secretary — By Mr. Buxbaum. Page 1, line 4, strike out the brackets and the period; also strike out all the words in lines 4, 5, 6 and 7 which are in italics; strike out the brackets in line 4.

Mr. Buxbaum — Mr. Chairman, I ask for a division; I want to vote on the term before we come to the vote on the salary.

The Chairman — As I understand the amendment it contemplates nothing except the question of the term.

Mr. Buxbaum — The Chair is correct.

The Chairman — A rising vote has been asked for. As many as are in favor of the amendment will kindly rise and remain standing until counted. The gentlemen will be seated. Those opposed will rise. The gentlemen will be seated. The Secretary will announce the result.

The Secretary — Ayes 85, Noes 45.

The Chairman — The motion has been carried.

Mr. Foley — The necessity for an amendment having ceased by the adoption of an automatic recall, I withdraw my amendment.

The Chairman — Without objection, the amendment offered by Mr. Foley is withdrawn.

Mr. J. S. Phillips — The necessity for my amendment having been passed, I will withdraw it.

Mr. Barnes — I assume that the temper of the Convention is in favor of the $20,000 salary, which is the only question involved in my amendment. Although I am entirely willing to vote against it myself, I assume that the Convention is very much in favor of raising it, and therefore, I will withdraw my amendment.

The Chairman — Without objection. Mr. Barnes' amendment is withdrawn.

Mr. Griffin — I ask leave to withdraw my amendment.

The Chairman — Without objection, the amendments offered by Mr. Griffin and Mr. J. S. Phillips will be withdrawn. The question occurs on the amendment offered by Mr. R. B. Smith, which the Secretary will read.

The Secretary — Amendment offered by Mr. R. B. Smith. Amend the title as follows: Strike out the word "section" and insert "sections"; also after the word "one" insert "and four". On page 2, after line 6, insert "Section four, Article IV of the Constitution is hereby amended to read as follows: 'Section 4. The Governor shall be commander-in-chief of the military and naval forces of the State. He shall have power to convene the Legislature or the Senate only on extraordinary occasions. At extraordinary sessions no subject shall be acted upon except such as the Governor may recommend for consideration. He shall communicate by message to the Legislature at every session the condition of the State and recommend such matters to it as he shall judge expedient. He shall transact all necessary business with the officers of the government, civil and military. He shall expedite such measures as may be resolved upon by the Legislature and he shall take care that the laws are faithfully executed.'" The following matter is enclosed in brackets: "He shall receive for his services an annual salary of ten thousand dollars and there shall be provided for his use a suitable and furnished executive residence."

Mr. Steinbrink — Mr. Chairman, I only rise to point out what is undoubtedly an error and not to debate. On lines 3, 4, 5 and 6, page 2 of the proposal before us, the sentence beginning that, "The Governor shall receive for his services", that sentence

was never in section 1. That is a matter that has been, through error, evidently transposed from section 4 of article IV, into section 1 of article IV.

Mr. Westwood — The reason for this interruption is that the confusion in the well has resulted in this, that Mr. Steinbrink failed to observe that the amendment offered by Mr. R. B. Smith of Syracuse was directed to iron out the very difficulty that you now direct attention to.

Mr. Steinbrink — I understand that, and that is what I wanted to make clear, that this was in fact old matter in the other section. It really should have been printed as new matter, because we have transposed it from one section to another.

The Chairman — The Chair wishes to observe that it would be well when we reach the Convention to instruct the Committee on Revision, if it is approved by the Committee of the Whole, to print lines 3, 4, 5 and 6, in italics, that it may appear as unquestionably it is, absolutely new matter, so far as section 1 is concerned.

Mr. Brackett — I want somewhere and in some way and somehow a chance to vote for the proposition that the Governor should receive ten thousand dollars. Now, I am willing to offer an amendment now and vote for it or wait for the third reading. I suppose that the time for offering amendments has passed under the rule.

Mr. Barnes — Mr. Chairman, I am willing to renew my motion on which it has been withdrawn. I do not know whether it is necessary to have unanimous consent or not. If you want a record on the salary, I will ask consent to renew my motion to amend.

Mr. Brackett — Mr. Chairman, I do not know but it is better on third reading, where we may have a record. We make no record here.

Mr. Barnes — If we can do it here, I am prepared to do it.

Mr. Stimson — Mr. Chairman, I should like to object to Mr. Barnes withdrawing his amendment.

Mr. Brackett — It can be done on third reading.

Mr. Stimson — I think it would be much better to settle it here, if I may say so.

Mr. Brackett — Mr. Chairman, what is the Barnes amendment?

Mr. Stimson — If Mr. Barnes will permit his amendment to remain, it can be settled here.

Mr. Barnes — I am entirely satisfied to have it disposed of. My motion was to amend the bill by striking out the enacting clause.

Mr. Brackett — Which would leave it just as it is.

Mr. Barnes — Yes.

Mr. Brackett — I am willing to have it that way.

Mr. Barnes — I shall ask for a division, or a rising vote on that matter.

Mr. Wickersham — Mr. Chairman, this is before we take up Mr. Smith's matter?

Mr. Brackett — Mr. Chairman, upon that, I wish to say, as Mr. Marshall to my right has suggested, we have a lot of dead matter that ought to be out and that we all want to get out. I will, therefore, move to amend the proposition by striking out in line 4, page 2, the brackets around the word "ten" and the word "twenty" in italics.

The Chairman — Mr. Brackett moves to amend on page 2, line 4, by striking out the brackets enclosing the word "ten" and striking out the word "twenty" in italics. Are you ready for the question? All those in favor of that amendment will kindly rise.

Mr. Blauvelt — Mr. Chairman, may I ask, is not the pending question the amendment offered by Mr. R. B. Smith?

Mr. Rhees — Mr. Chairman, will you kindly tell us what we are voting on?

The Chairman — The question is on the amendment offered by Mr. Brackett, that on page 2, line 4, the brackets shall be stricken out enclosing the word "ten" and striking out the word "twenty" in italics, leaving the salary ten thousand dollars. All those in favor of the amendment will please rise and remain standing until they are counted. The gentlemen will please be seated. Those who are opposed will rise and remain standing until counted. The gentlemen will be seated. It is manifestly lost.

The question now occurs upon the amendment offered by Mr. R. B. Smith.

Mr. J. S. Phillips — A point of order.

The Chairman — The gentleman will please state his point of order.

Mr. J. S. Phillips — It seems to me that the amendment offered by Mr. R. B. Smith amends another section. Why should we not dispose of this section first, in accordance with the rules? It seems to me the motion now is upon this Section 1 as amended.

The Chairman — I think that it is very proper to amend the Proposed Amendment by adding a new section. The Chair is inclined to believe that the Committee has a right to consider any proposal section by section, and inasmuch as this is but one

section, it could have so ordered, and any amendment, I think, that is pertinent to the subject matter of his section, can be acted upon by the Committee of the Whole.

Mr. Rhees — I merely wanted to say that Mr. Smith's amendment will be pertinent if the amendment of the Committee as amended by the Committee of the Whole prevails. If the amendment of the Committee as amended by the Committee of the Whole does not prevail, then Mr. Smith's amendment is not necessary. Consequently I think that it will create confusion if we act upon Mr. Smith's amendment before we act upon the proposal of the Committee.

Mr. Doughty — May I ask unanimous consent to bring up this question of salary of twenty thousand dollars by changing it to fifteen thousand?

Mr. Wickersham — Mr. Chairman, I object.

The Chairman — Objection is made. Is there any objection to considering Section 1 independently of the amendment offered by Mr. R. B. Smith? The Chair hears none. All those in favor of the proposed amendment, General Order No. 26, as amended by the amendment offered by Mr. Buxbaum, will say Aye, contrary, No. It is carried.

Mr. Wadsworth — A parliamentary inquiry, Mr. Chairman. When does this salary take effect, according to this bill?

The Chairman — The Chair is not in a position to render an off-hand opinion in the matter.

Mr. Wickersham — As Mr. R. B. Smith's amendment is now before the house, I move that the question on that amendment be put next. I understand that it has not been withdrawn.

The Chairman — Are you ready for the question which occurs on Mr. R. B. Smith's amendment? I believe the Secretary has read it. All those in favor will say Aye, contrary No. Carried. Now, are you ready for the question on General Order No. 26 as amended. All those in favor will say Aye, opposed No. Carried. The Secretary will read the next General Order.

The Secretary — Proposal, printed No. 419, General Orders No. 37, by Mr. Parsons.

Mr. Franchot — I ask unanimous consent to substitute the General Order No. 54 for General Order No. 37, the reason for my request being that this evening Mr. Parsons, the chairman of the Committee on Industrial Interests and Relations, who is in charge of No. 37, is suffering a slight indisposition and would prefer to go on to-morrow rather than this evening.

Mr. Wickersham — I unite in the request made by Mr. Franchot, that General Order No. 54 be taken up and that the consideration of General Order No. 37 be postponed. I think that

we can dispose of that before rising, if the members will be indulgent.

Mr. Barnes — I raise the point of order that the hour for adjournment has arrived. These are very important matters and we want to have plenty of time to consider them.

Mr. Wickersham — I hope the point of order will not be insisted upon, or, if it is, I move that the committee do now rise and report progress and ask leave to sit again forthwith until 11:30 p. m. We have got a great deal to do this week, and if we do not keep at it, we will not get through. I hope that Mr. Barnes will not press his point of order.

Mr. Barnes — I do not understand this amendment of Mr. Franchot's. I do not understand it now, and I want time to consider it. We are getting into these industrial matters now.

Mr. Franchot — I will say this is not the matter that Mr. Barnes thinks it will be and it will take a very short time to lay it before the Committee of the Whole. I do not anticipate that any particular objection to its passage will arise.

Mr. Barnes — Do I understand that there is nothing in Mr. Franchot's proposition which relates to industrial matters?

Mr. Wickersham — No.

Mr. Barnes — I will withdraw my point of order then.

Mr. Wickersham — Mr. Chairman, Mr. Barnes withdraws his point of order.

Mr. Barnes — On the understanding that Mr. Franchot's amendment is as Mr. Wickersham says.

The Chairman — Is there any objection to considering General Order No. 54, as the next general order? The Chair hears none.

Mr. Franchot — Mr. Chairman, this proposed amendment deals with a section of the Constitution which has survived —

Mr. Schurman — May I rise to a point of order? It is impossible for us to hear at this end of the room what Mr. Franchot is saying. We don't know what he is talking about.

The Chairman — The committee will conserve its own time and find it much more profitable if it will maintain greater silence and listen to the gentleman who has introduced this proposal.

Mr. Franchot — Mr. Chairman, this proposal has to do with the amendment of a section which survives from the Constitution of 1846, and which abrogated offices then in existence and prohibiting the re-creation of any such offices in the future for the "weighing, gauging, measuring, culling, or inspecting any merchandise, produce, manufacture or commodity whatever," and so forth. The original proposal as introduced by me contemplated the striking out of the section in its entirety. It was along the

lines of the suggestion made by Senator Blauvelt last Monday evening when he called attention to the fact that section 8 of article V was yet undisposed of. After consideration in Committee on Industrial Interests and Relations it was decided to report the bill amended so that the section remains, but is changed to conform to the modern development with respect to the subject which ought to be dear to the hearts of all of us, namely, the high cost of living. The amendment proposed is to take out from inhibition of the section the establishment of officers for the inspecting and grading of food products; that is to say, offices for inspecting and grading, which shall not be compulsory upon anybody. The purpose is to free the hands of the Legislature so that it may be able to meet the problem of excessive cost of food products, resulting from the present market conditions in the cities of this State, and to place the Legislature in the same position as those of numerous other states that have adopted legislation looking to the remedying of evils in our present methods of distribution. Now, the genesis of this idea comes from the office of the Attorney-General of this State who has conducted or been familiar with numerous investigations into the conditions attending the distribution of food in the cities of the State, and especially the City of New York, and I cannot do better than to read an extract from a letter from the Attorney-General explaining the need for this measure. The letter reads in part as follows: "When originally adopted, in 1846, this section served the useful purpose of abolishing a large number of sinecure relics of a bygone commercial system." Now, let me say, prior to 1846, on the theory that by government inspection and stamping of products of manufacture, their value in the foreign markets could be enhanced, there were statutes which established government officers, for the inspection and measuring of various products of all kinds, and which made it compulsory upon people dealing in those products to secure that inspection. In other words, nobody could trade in the particular products covered by the statute unless they secured the government stamp. Prior to the Constitutional Convention of 1846, the compulsory features pursuant to a wide popular demand — the compulsory features of the inspectors were abolished, but the demand for the abolition was so great that in the Constitution of 1846 they thought they would make a good job for all time, and they put in this prohibition. Now, of course, the conditions, the trade conditions of those days were entirely different from what they are now, and it was doubtless not within the contemplation of anybody in that Convention, that in the latter days, the early part of the twentieth century, conditions would rise which led those familiar with them and who had investigated them to come to the conclusion that government

interference with respect to regulating the distribution of food products, regulating the middlemen, would become necessary. The Attorney-General goes on to state "at that time, in 1846, the laissez-faire doctrine was economic gospel. Since 1846 times have changed. Many careful students now believe that our present condition of exorbitant cost of distribution, in the case of many commodities exceeding two-thirds of the total cost to the consumer, can be secured only by a judicious supervisory participation of government in the process of distribution, preventing restraint of trade and fraud between producer and consumer."

Mr. Baldwin — Would this bill prevent the Legislature creating an office for the public weighing of coal?

Mr. Franchot — The particular amendment which I propose would not, but the section of the Constitution as it now stands does.

Mr. Blauvelt — Is there any objection to striking out the entire section from the present Constitution?

Mr. Franchot — I have no objection whatever, and I think that possibly that would be the best course to pursue, but, having learned by the experience of my friend, Mr. Austin, with respect to that part of the Constitution which he designated "junk," I did not think it advisable to come to this Convention with the proposition to strike out something just because it was junk. I myself considered that this particular section is in that category.

Mr. Wickersham — Does not the gentleman fear that the liberties of the people might be seriously imperiled if we struck out this sacred protection of their liberties?

Mr. Franchot — I myself, Mr. Wickersham, have no such apprehension.

Mr. Brackett — I would like to know if the gentleman from Niagara, Mr. Franchot, has any notion that General Wickersham knows a solitary thing about the liberties of the country people?

Mr. Wickersham — Mr. Chairman, I do not claim to know anything about the liberties of the people of Saratoga.

Mr. Franchot — If any gentleman in the Committee of the Whole wishes to propose an amendment to strike out the entire section, it will probably shorten the discussion.

Mr. Blauvelt — Mr. Chairman, I propose to amend Mr. Franchot's Proposed Amendment by striking out the entire section, by placing a bracket in front of "Section 8" in the first line and after the word "hereafter" in line 6 on page 2, striking out the entire section. Strike out the brackets and new matter and then place brackets around the entire section.

Mr. Clinton — Mr. Chairman, will Senator Blauvelt permit me to make a suggestion? The title will have to be amended; it should be made to read "to repeal Section 8."

Mr. Blauvelt — I beg to differ with the gentleman from Erie. Section 8 of the Constitution, as it now is, would be restored by striking out all the brackets and all italicized matter. I then proposed to amend the existing section by placing a bracket around it and striking out the entire section, so that the enacting clause would have to remain and the title would have to remain.

Mr. Clinton — The title is "to amend Section 8" and the result of your amendment —

Mr. Blauvelt — I will move to amend the title so as to read "to repeal Section 8 of Article V of the Constitution".

Mr. Franchot — In view of the fact that the sentiment seems to be general in favor of that motion, and that it will prevent the detaining of the members of the Committee here any longer if carried, I would suggest that that motion be put now; if it is defeated, I should like the opportunity to resume the floor.

Mr. Leggett — I dislike to see the Convention get in such a light-minded mood and take out section after section of this revered Constitution which has been here since 1846.

Mr. Franchot — Has your attitude on the subject anything to do with the disposition which the Convention made of a previous attempt of yours to strike something out?

Mr. Leggett — No, not at all. I simply want to ask the Convention, and let each member take the responsibility himself, whether he has really investigated the causes that led to the enactment of this particular section of the Constitution of 1846, so that he is satisfied that the evils against which it was directed will not recur when it is taken out of the way.

Mr. Wiggins — Does the gentleman know, as the result of the history of the last two days, that not much consideration is placed on what the Constitution of 1846 did?

Mr. Leggett — I have come to realize that in the last day or two. There has been such an entire change in the attitude of some of the men of this Convention that I have not quite recovered from the shock.

Mr. Wiggins — I did not know that was so because you helped reduce the shock.

Mr. Leggett — I was going to suggest to Mr. Austin that he might perhaps get his original proposition revived during this change of attitude. I merely wish to say — I do not want to take up much time here — that this section seems to have been directed in 1846 against the immense swarm of petty officers that had been created all over the State of New York to weigh and to measure and to inspect and to gauge and to cull merchandise of almost every description until they had become an immense expense, and an intolerable nuisance. When the people got a crack at

them they cut them right out of existence and enacted that they should never be re-created. While trade conditions have changed, is it not true that human nature has not changed very much? If you take away this prohibition completely and entirely, are you not simply throwing the door wide open to the creation of these officers over and over again? I put it up to you, gentlemen. Gentlemen, it is up to you.

Mr. Stowell — As I understand this section in the present Constitution, it was put in there to cure a very great and existing evil. My understanding is that for many years cars of produce sent into the city of New York from different parts of the country or all over the country were subjected to a series of inspections created under the color of law by the city authorities of New York. The evil became so great, the charges upon those cars for inspection were so great that the matter was brought to the Constitutional Convention and this provision was inserted there. My fear is that, with the abrogation of this section, the same evils will hereafter occur, and any man — and there are a great many of them up in the country who are sending carload after carload of produce to the city of New York — will meet the same difficulties, the same oppressions and the same exactions which were the cause of placing this provision in the Constitution. I hope this amendment will not prevail.

Mr. Wickersham — I think we should hesitate before striking out thoughtlessly a provision that has been in the fundamental law for so long. I confess I am not sufficiently familiar with its history to form an opinion about it, and I do not think we should at this late hour of the night undertake to strike out the provision in the Constitution that is now there, that has been there for so long, without understanding fully what we are doing.

Mr. Wiggins — Mr. Chairman, I make a motion to strike out the enacting clause.

Mr. Marshall — I suggest that Mr. Franchot discuss his amendment and by the time he gets through with the discussion of it we will be able to determine whether or not it is desirable to adopt Mr. Blauvelt's amendment or Mr. Franchot's amendment, or to leave matters as they are. I think we ought to know what Mr. Franchot's idea is in his amendment.

Mr. Stowell — I simply ask for a careful consideration of this matter. It may be that Mr. Franchot is right; I do not think he is. I do not think that Mr. Foley is right. There is a little too much of a flippant mood in this Convention to-night. This matter ought not to be pressed.

Mr. Parsons — If the Committee will excuse my voice I will try to explain this matter, in addition to what Mr. Franchot said.

Back of 1846 the people in the State conceived the idea that the products of the State would sell better if they were stamped "Made in New York", and so laws were passed providing for inspection and stamping "Made in New York" in the hope that they would get higher prices than were obtained for goods manufactured in other states. That led to great abuses, and, as Mr. Leggett said, there finally came to be a great army of officers; I think the debates on the Constitution of 1846 show that there were 5,000 of them. They were paid by fees. The law was compulsory. Your things had to be inspected. I do think there is some doubt as to whether or not the section should be stricken out, and therefore the committee, instead of striking out the amendment, should amend it so that it would not prevent the appointment of officers for the non-compulsory inspection. The difficulty we have now is this: Compare our situation with that of Illinois. In Illinois on the Chicago Board of Trade they sell things according to standards fixed by a State officer. You do not have to sell on the Chicago Board of Trade if you do not want to. You don't have to come up to this standard. But if you do sell, then you sell according to those standards. Now, the Attorney-General fears that under the section as it now is, that is as it was put in in 1846, it would prevent legislation such as they have in Illinois. That is the legislation which would merely provide that if you want to sell on a board of trade or at a city market, you can go to a public official and have him say whether your goods come up to the standard or not. But the difficulty with the constitutional provision as it now stands is that it applies to every kind of an office, whether it is for the compulsory inspection or for the non-compulsory inspection, so that this amendment suggested entirely by the Attorney-General's office was adopted. And you will notice that it says that "nothing in this section contained shall prevent the creation of any office for the purpose of protecting the public health"— that is already in — "the non-compulsory inspection and grading of food products". The non-compulsory inspection. Nobody has to have his product inspected; but it does make possible in the only way in which it can be done, the standardizing of articles which are to be sold at the public market.

Mr. Lindsay — There is no limit to the number of officers that can be appointed for this non-compulsory inspection. Suppose the board of trade or others in New York should deem it advisable to grade all the stuff, especially that shipped to New York, for sale, and they should appoint four or five hundred persons

for that under this law of non-compulsory inspection, and suppose a person did not have to have his products graded, but suppose, which naturally follows and which actually was the case in Illinois — in Chicago, in grading there, that he could not sell his products unless he had the official stamp, because he could not get the price he was entitled to get. Wouldn't the evil be just as great as if it was compulsory? And isn't it a fact that if officers were appointed for non-compulsory inspection, and did proceed to inspect and fix the grade, they can practically fix the price on wheat or anything else, shipped to the city of New York, by the farmer?

Mr. Parsons — Not at all. Of course, the officers would be authorized by legislation. Now, from the Attorney-General's point of view this is largely in the interest of the producer, because now, as was testified to before the Committee by the representative of the Attorney-General's office the producer has no chance with the people in New York. They send it back and say the greater part of your stuff was not up to grade.

Mr. J. G. Saxe — How much more interference with agricultural business in these lines would this amendment permit?

Mr. Parsons — Well, it was the view of the Committee, and I think most of the members of the Attorney-General's office, that it was to the interest of the producers of agricultural products.

Mr. J. G. Saxe — I don't think the delegate from New York, Mr. Parsons, entirely answered my question. I was in the Senate and these bills kept coming along all the time; it came to interference with apples one day and peaches the next. I know I voted against every single one of them, and I am wondering how much further this bill would open the doors for more interference.

Mr. Franchot — If I may be permitted to answer the question, Mr. Chairman. It does not contemplate any interference with the agricultural interests in the State at all.

Mr. J. G. Saxe — I know it does not contemplate any interference. I ask how far it permits it?

Mr. Franchot — It does not permit it to be done any more than it can be done now. This measure is designed to free the hands of the Legislature solely and simply that they may establish officers in connection with markets, for instance, for the impartial grading or fixing of the quality of food products.

A Delegate — By law?

Mr. Franchot — No; not by law, but establishing officers who can inspect and properly and impartially grade, and thereby standardize food products.

Mr. J. G. Saxe — Isn't it a fact that the bills have been passed

allowing that very thing during the last few years and have not been held unconstitutional?

Mr. Franchot — Bills have been passed based on the protection of the public health; but in so far as any office has been attempted to be created for the inspection of grades or qualities of products, they could not be sustained.

Mr. J. G. Saxe — Isn't there an apple-grading bill on the statute books to-day, one passed last year and one in 1911; by Senator Griffin in 1911 and one last year?

Mr. Franchot — The delegate will find that does not create any office or officer for the purpose of inspecting or grading.

Mr. Leggett — The scheme on this bill is to create officers.

Mr. J. G. Saxe — I am in favor of Mr. Wiggins' motion.

Mr. Wiggins — I am glad to welcome you to the ranks.

Mr. Cullinan — Mr. Chairman and gentlemen, I am in favor of Mr. Wiggins' motion. The situation, as I look at it is this: New York State is becoming one of the greatest apple states in the Union, and it ships large quantities to Europe. It is necessary in order that the standard of New York apples be maintained, that there be some official way of compelling the observance of that standard, and the temptation for small barrels or bad fruit is very great, and it results in general disadvantage to every producer of fruit in the State. This bill allows, compels, or authorizes the Legislature, in adopting a law, to compel the standardizing in the interest of the people of all the fruit growers of this State. I think the law is sufficient as it is to-day and it ought not to be changed.

Mr. Wickersham — Mr. Chairman, a point of inquiry. I did not understand Mr. Wiggins' motion.

Mr. Wiggins — To strike out the enacting clause, and leave the Constitution as it now is.

Mr. Wickersham —No, we are adopting a new Constitution. You strike out the enacting clause in this measure and you remove from this Constitution not only the Proposed Amendment but the existing section.

Mr. J. G. Saxe — When the final committee brings in the new Constitution, it will bring in all the sections together with all sections not stricken out and unamended. This particular motion is merely to strike out the enacting clause in this particular Proposed Constitutional Amendment, and has no relation to the section which this Constitutional Amendment proposes to amend.

Mr. Wickersham — Mr. Chairman, we have with great pains stricken out parts in italics in proposed amendments for the purpose of proposing the text as it stands in the Constitution. Now, we ought to conform to the same plan.

The Chairman — The Chair understands the parliamentary situation to be that if the enacting clause is stricken out it kills the proposed amendment, and therefore it will kill all of the bracketed matter, and all of the italicized matter, and leave the Constitutional provision as now in force.

Mr. Austin — Mr. Chairman, one observation. I want to call the attention of the committee, it having been referred to by Mr. Franchot, that when they struck out the enacting clause of my agricultural lease amendment, they did not strike the agricultural lease section from the Constitution.

Mr. Clinton — It seems to me that the proper motion is that when the committee rise, the report in favor of the amendment be not passed.

Mr. Franchot — Mr. Chairman, in view of the fact there does not seem to be very much disposition to listen to an exposition of the necessity for this proposal this evening, I rise to a point of order that the hour for adjournment has now come, and that the committee now rise. I should like to be permitted before snap judgment is exercised by the Committee of the Whole to at least state the reasons which are substantially why the prohibition of this section should be made not to extend to food products in this State.

Mr. Leggett — Mr. Chairman, I don't want to object to his going on, but if he is permitted to do that, then, as another member of the committee I wish to be heard in opposition.

The Chairman — Do you press your point of order?

Mr. Franchot — I don't know whether I do or not. If the continued call of question is made, I shall of course press the point and I think that in all fairness there should be given a hearing.

Mr. Wickersham — I rise to a point of order. Under the general order under which we are proceeding, as I understand it, a certain time is allotted to the bill and the gentleman in charge of the bill is given, I think, twenty minutes. Now, I think he ought to be allowed to finish his statement and then we should vote. I ask that that rule be observed.

Mr. Franchot — How much more time have I got, Mr. Chairman?

Mr. Quigg — I suggest that the gentleman from Niagara raised a point of order and I ask the Chair to pass on the point of order.

Mr. J. G. Saxe — I beg to call the Chair's attention to the fact that we are proceeding under a special rule, and therefore proceed for an hour under that special rule, not guided by the general rule as to hours, and that has been the procedure in Committee of the Whole for the last two weeks. A special rule — an hour on this matter, regardless of the hour of the clock.

The Chairman — The Chair would have to rule that the matter will have to go over until to-morrow and the balance of the hour taken from to-morrow's session. The hour for adjournment has arrived.

Mr. Wickersham — Did I hear that point of order is pressed? I think the hour has almost expired. How much more time is there?

The Chairman — About five minutes left.

Mr. Wickersham — Then I beg the gentleman will not press the point of order.

Mr. Quigg — I did not raise it. Mr. Franchot raised it.

Mr. Franchot — I shall not press it, Mr. Quigg. Now, this proposal before the Committee of the Whole was introduced originally at the request of the Attorney-General of this State, based upon facts which have come to his knowledge in numerous investigations and lawsuits which revealed a condition with respect to the distribution of food products in this State, which will undoubtedly very shortly, and certainly at least before twenty years have expired, require a remedy in legislative action, and that legislative action for the purpose of remedying those conditions will necessarily involve the appointment of officers who shall be ready to inspect and grade the food products of this State. Now, the purpose of this amendment is purely and simply to free the hands of the Legislature as it may develop after investigation; to free their hands to follow if the Legislature deems advisable the example in the treatment of problems of this kind of at least ten of the largest states of this Union, to wit, Ohio, Indiana and Illinois, New Hampshire, North Carolina, Kentucky, Maine, Maryland, Connecticut. In those states problems have arisen with respect to that cost of living element which comes from improper grading and insufficient inspection of foods between the time they leave the producer and get into the hands of the consumer. In those states, I say, the method adopted has been to establish the standard grade of products by the means of officers appointed either by the State or by some subdivision thereof, who are charged with the duty upon request only to fix the grades or qualities of food products in event of a dispute between the producer and the middleman. Conditions at present are not what they were in '46. In those days men dealt from hand to hand. They saw the products which they were producing and they saw the men with whom they were dealing and to whom they sold. Now, the sales are made in the great cities of this State by men who ship the products from a distance and the conditions developed in the city of New York are these, that the men who purchase food products for the purpose of reselling the same are

absolutely in control of the grading of those products. The commission merchants and the exchanges in the city of New York, for instance, not only by means of "wash" sales upon the exchanges, fixed by selling only about three per cent of the total sales, the price of the products, but they have it absolutely within their power to-day, under this private grading and inspecting, to change at will the grades of the very products upon which they fix the price. That is the situation to-day and the producer is at the mercy of the men in the larger cities with whom he deals.

Mr. Unger — I think I can help you out, Mr. Franchot.

Mr. Franchot — I shall be very glad. I evidently need the assistance.

Mr. Unger — Is your proposal intended to reduce the high cost of living in one respect, at least, by the creation of proper public markets in the cities?

Mr. Franchot — That is the main purpose. Instead of these numerous and sporadic investigations and prosecutions of the evils which arise from the present situation the time is rapidly approaching when the State of New York must get at the underlying cause, must attack the disease rather than merely attempting at intervals to evade the symptoms of the disease. This is the consensus of intelligent opinion, and I will say in passing that there were before the Committee representatives of numerous interests from the city of New York and elsewhere demanding the passage of this amendment.

Mr. Ostrander — Does the gentleman's proposition contemplate official grading of food products of all kinds?

Mr. Franchot — In answer to that, I will say, Mr. Ostrander, that the function of a public market is two-fold. First, to establish a place in which products of this kind can be dealt in; second, to establish an impartial system of grading of which the person who trades at that market may have the advantage if he so desires. Now I say to you, gentlemen of the Committee, that if in the haste of this late hour you pass summary judgment without due consideration upon this proposal, demanded by one of the officers of this State — not demanded but advised — without any due appreciation of the problem involved, simply because you do not know — vote to kill this amendment — you will in that particular, at least, have failed, as I see it, in your duty to consider impartially and with some degree of patience, at least, the proposals which are presented to you for your action thereon.

Mr. Leggett — Mr. Chairman, just a moment, to present the other side. I was a member of this Committee on Industrial Interests and Relations. There did appear before this Commit-

tee some subordinate officers of the Attorney-General's office, the only parties who appeared to advocate this measure. The only instances they gave that would in any way serve as an excuse for this amendment, were certain instances they detailed of commission men in New York city having sold certain products, like poultry and eggs, for a certain price, and then remitting to the producer a less price. Not one single instance of any producer living in the State of New York was adduced. A few instances were adduced from Indiana, Tennessee and possibly one or two other instances. These instances evidently come within the interstate commerce act and this could have no effect upon it. Now it is said that this proposal is intended to make possible the creation of public markets. In Heaven's name, what has this particular thing got to do with the creation of public markets? It is to take away the prohibition which prevents the creation of officers, and that is all.

Mr. Westwood — Mr. Chairman, I think I appreciate a good time as well as anybody. My sense of humor has been indulged, I think, as much as that of anyone present, and I sympathize very much with Mr. Franchot and the chairman of this Committee, in that the tenor of the House is in such condition now that the proposal could not receive consideration on the merits. It is a matter which ought to receive sober consideration. Now, then, I move, Mr. Chairman, that the Committee rise, report progress and ask leave to sit again on this proposition.

Mr. Wickersham — A point of order, Mr. Chairman. Is not the time to vote, the hour set for the discussion of this measure at an end? If so, I move that a vote be taken in accordance with the rule.

Mr. Franchot — Mr. Chairman, I rise to the point of order that there is no quorum.

The Chairman — The Chair is inclined to think there is a quorum present, and sees one before him.

Mr. Franchot — I ask for a call of the House.

Mr. Wickersham — I ask the Chairman if the hour fixed for the discussion of this measure has not expired?

The Chairman — It has.

Mr. Wickersham — Then I move that the vote be taken.

Mr. Westwood — Mr. Chairman, I had a motion pending, that the Committee rise, report progress and ask leave to sit again.

Mr. Wickersham — A point of order, Mr. Chairman: under the rule, the time having expired nothing is in order except the vote upon the measure pending before the house.

Mr. Westwood — Upon that point of order, let me observe, Mr. Chairman, that time and time again in the deliberations of the

Committee of the Whole, after the time has expired by half an hour, Mr. Wickersham has —

The Chairman — The gentleman will be in order. A motion to rise and report progress is in order at any time and is not debatable. All in favor of the motion to rise, report progress and ask leave to sit again will rise. Those opposed will rise. The motion is lost.

Mr. Coles — Mr. Chairman, I think the delegates must see that this is the first time we have been in doubt upon a question. We are at sea. Absolutely at sea, and I think more light ought to be thrown on this question before a vote is taken.

Mr. Marshall — Mr. Chairman, may I say one word upon this measure?

The Chairman — The time has expired for consideration of the measure.

Mr. Marshall — I think it requires amendment.

The Chairman — The pending question is upon the amendment offered by Mr. Blauvelt, which the Secretary will read.

The Secretary — By Mr. Blauvelt, to amend the title by striking out the word "amend" and inserting in place thereof the word "repeal"; also striking out the words "in order to permit the non-compulsory grading of food products"; page 1, line 2, strike out the words "amended to read as follows" and insert therein the word "repeal"; in section 8, strike out all brackets and italicised matter and place bracket in front of section 8 in first line and after the word "hereafter" in line 6, page 2.

The Chairman — All in favor of the amendment offered by Mr. Blauvelt will rise. Those opposed. The motion is manifestly lost. The question now occurs upon the motion offered by Mr. Wiggins.

The Secretary — Mr. Wiggins moves to strike out the enacting clause.

The Chairman — As many as are in favor of striking out the enacting clause will rise. Those opposed will rise.

The Secretary will announce the result.

The Secretary — Ayes, 30; Noes, 44.

The Chairman — The motion is lost.

Mr. J. G. Saxe — Mr. Chairman, I move to rise, report progress and ask leave to sit again for an additional hour.

Mr. Quigg — I submit, Mr. Chairman, that we are taking a vote and no additional business has been done. We are taking a vote.

The Chairman — The motion to rise and report progress is always in order and not debatable. Those in favor of the motion will say Aye, opposed No. The motion is lost.

Mr. Sears — Mr. Chairman, may I ask unanimous consent to propose a slight amendment?

Delegates — Objection.

The Chairman — Objection is made.

Mr. Sears — It is a matter of phraseology; it will save time on third reading.

The Chairman — Objection is made. Those in favor of the proposed amendment offered by Mr. Franchot will rise. Those opposed will rise. The motion is carried.

Mr. Wickersham — Mr. Chairman, I move that the Committee do now rise and report the action that has been taken.

The Chairman — Those in favor of the motion will say Aye, opposed No. The motion is carried. (The President resumes the Chair.)

The President — The Convention will come to order.

Mr. Hinman — The Committee of the Whole has had under consideration General Order No. 26 and has reported in favor of the amendment with amendments.

The President — The question is upon agreeing to the report of the Committee of the Whole. All in favor will say Aye, contrary No. The Ayes have it. The report is agreed to, and the proposed amendment goes to the order of third reading.

Mr. Hinman — The Committee of the Whole has also had under consideration General Order No. 54, which it begs leave to report favorably without amendment.

The President — The question is upon agreeing to the report of the Committee of the Whole. All in favor will say Aye, contrary No. The report is agreed to and the proposed amendment goes to the order of third reading.

Mr. Wickersham — Mr. President, I move that we adjourn.

The President — It is moved that we adjourn. All in favor of the motion will say Aye, contrary No. The motion is agreed to and the Convention stands adjourned until 10 o'clock to-morrow morning.

Whereupon, at 11:45 p. m., the Convention adjourned to meet at 10 a. m., Thursday, September 2, 1915.

THURSDAY, SEPTEMBER 2, 1915

The President — The Convention will please be in order. Prayer will be offered by the Rev. Charles S. Hager.

Rev. Mr. Hager — Oh, God, our Father, again we pause at the beginning of the day's responsibilities to acknowledge our dependence upon Thee. Gratefully and humbly we pray for the

guidance of Thy Holy Spirit in the doing of this day's work. Somewhere between conflicting opinions and the differing desires of minds and hearts there lies the path that leads to the largest wisdom, the greatest welfare of this State. May that path be found in all the deliberations of this assemblage. Guide this day, we pray Thee, and may each member of this Convention by his actions here earn a place that will entitle him to the everlasting gratitude of the State. We ask it all in the name and in the spirit, we trust, of the great Master and Teacher, Jesus Christ. Amen.

The President — Are there any amendments to be proposed to the Journal as printed and distributed? There being no amendments proposed, the Journal stands approved as printed. Presentation of memorials and petitions. The Chair lays before the Convention a memorial from the Canal Boat Masters of the Port of Buffalo, which will be referred to the Committee on Canals. Communications from the Governor and other State officers. Notices, motions and resolutions. The Secretary will call the roll of districts.

Mr. Griffin — Pursuant to the notice which I gave yesterday, I now move that bill No. 29, in the Civil Service Committee,— that the Committee be discharged from consideration of that bill and that it go in general orders and be printed along with the majority and minority reports. On Tuesday, August 31st, I find this in the Record: Mr. Rhees, on behalf of the Committee on Civil Service, presented his report and he stated: "A minority of the Committee also presents its report. I move that both reports be printed as documents and referred to the Committee of the Whole". Mr. Unger on behalf of the minority presented his report. The President said: "Without objection, the reports will be received and referred to the Committee of the Whole." Mr. Olcott, who is the sponsor of this bill, asked the President: "Does that apply to both the majority and minority reports?" The President replied, "Yes; they both go to the Committee of the Whole". I do not want to go into the discussion of the merits of the proposition. All that I think we ought to do, and I think it is fair that it should be done, is to have the bill which is the basis of these reports before the Committee of the Whole. That is my motion, that the bill which is responsible for these reports may be before the Committee so that they can all be discussed, both the majority and minority reports and also the bill itself and the other bill along that line, so that they may be considered by the Committee of the Whole.

Mr. Parsons — Apparently this would give rise to some discussion, and therefore I object.

The President — The Chair, without passing upon that objection, will say to Mr. Griffin, according to his statement, which corresponds with the Record, the Committee on Civil Service has reported and cannot now be discharged.

Mr. Griffin — They have reported, Mr. President, but they have not yet reported the bill.

The President — They reported against the bill and that report has been referred to the Committee of the Whole. It is not now in the Convention; it is in the Committee of the Whole. That report will bring up the consideration of the bill.

Mr. Griffin — I should imagine that it would.

The President — The report will necessarily bring up the consideration of the bill.

Mr. Griffin — I imagine that it would, Mr. President, if the bill had been reported out along with a report. The bill as it stands now is in the Committee on Civil Service.

The President — No, the gentleman is mistaken. The bill is not in the Committee on Civil Service. There has been an adverse report upon the bill, and that adverse report was referred to the Committee of the Whole. The motion to discharge the Committee on Civil Service cannot be entertained.

Mr. Griffin — Well, Mr. President, if your construction of the proposition is that the bill in question, No. 29, and all the bills bearing on the civil service matter accompany or go with these reports and may be considered in the Committee of the Whole, I have nothing to find fault with because that is just the point that I desire to accomplish.

The President — The whole subject is open for consideration by Committee of the Whole upon the adverse report of the Committee on Civil Service which has been referred to the Committee of the Whole.

Mr. Brackett — I have no interest in the bill in question. I would suggest to the gentleman who is seeking to get consideration of the bill that a motion to direct the Rules Committee to make a special order of it so that we can have a discussion, or to discharge the Committee of the Whole, will enable him to bring up the question and, I assume, have such discussion as he wants. I think either one of those motions would be in order.

Mr. Whipple — I may be entirely mistaken but it occurs to me that when a committee reports adversely on a bill and the House agrees with the report, that kills the bill. That is as I remember it.

The President — That would seem to be the case. The Secretary will continue the call.

Mr. Griffin — I wish to ask the indulgence of the President of

the Convention for a moment. The view of Mr. Whipple, I think, is perfectly correct. If the adverse report of the committee is agreed to, that will kill the bill, but no such disposition was made of the report. The report of the Civil Service Committee still remains open. There is before the Committee of the Whole the majority report and the minority report. The record of that, Mr. President, is in Tuesday's Record. If I cannot accomplish the desired purpose in that direction in the way suggested, I would like to amend the motion so that the adverse report and the minority report be noted on the calendar of general orders.

The President — They are now on the calendar of general orders.

Mr. Griffin — Not on the printed calendar, Mr. President.

The President — They are in the Committee of the Whole and should be upon the printed calendar.

Mr. Griffin — I agree with you on that, Mr. President.

The President — The Secretary will take notice that they should be upon the calendar. The Secretary will continue the call.

Mr. Olcott — I desire to ask unanimous consent that the call of the 18th district be recurred to. I suppose this matter would be possible of disposition on Mr. Griffin's notice, but I now ask unanimous consent to go back to the 18th district. I desire, if the President please, to give notice that at a future day I shall move for a direction to the Committee on Rules to give time for the consideration of this Spanish War Veterans proposition, now in general orders.

The President — That notice will be placed upon the Record, and the Committee on Rules will take notice of it.

Mr. Olcott — May I make a motion at present, or is that one which requires notice?

The President — It requires notice.

Mr. Olcott — I so supposed when I gave this notice.

The President — The call will be continued.

Mr. Barnes — Mr. President, I move to recommit to the Committee on Legislative Powers, for the purpose of clearing the calendar, printed No. 753, now in general orders.

The President — What is the general order number, Mr. Barnes?

Mr. Barnes — No. 24.

The President — All in favor will say Aye, contrary No. Motion is agreed to.

The President — Reports of standing committees. Reports of select committees. Third reading. The Secretary will read the title of the first bill on the calendar of third reading.

The Secretary — No. 852, by Mr. Dow: To insert in the Constitution a new article with reference to the conservation of natural resources.

The President — The time for debate upon this article has expired.

The Secretary will call the roll. The delegates will answer to their names. Those in favor of the adoption of the article will answer Aye, and those opposed will answer No.

Those who voted in the affirmative were: Adams, Allen, F. C., Angell, Austin, Baldwin, Bannister, Barnes, Barrett, Baumes, Bayes, Beach, Bell, Berri, Blauvelt, Bockes, Brenner, Burkan, Buxbaum, Byrne, Clinton, Clearwater, Cobb, Coles, Curran, Dahm, Daly, Dennis, Devo, Dick, Donovan, Dooling, Doughty, Dow, Drummond, Dunmore, Dykman, Eggleston, Eppig, Fancher, Fobes, Fogarty, Ford, Franchot, Frank, Gladding, Greff, Griffin, Haffen, Hale, Heaton, Johnson, Jones, Landreth, Latson, Law, Leary, Leitner, Lincoln, Linde, Lindsay, Low, Mandeville, Mann, Martin, F., Martin, L. M., Marshall, Mathewson, Mealey, Meigs, Mulry, Nicoll, D., Nixon, O'Brian, J. L., O'Brien, M. J., Olcott, Ostrander, Owen, Parmenter, Parsons, Pelletreau, Phillips, J. S., Phillips, S. K., Potter, Quigg, Reeves, Rhees, Rosch, Ryder, Sanders, Sargent, Saxe, M., Schurman, Sears, Sharpe, Shipman, Smith, E. N., Stanchfield, Standart, Steinbrink, Stimson, Tierney, Unger, Vanderlyn, Van Ness, Wadsworth, Wafer, Ward, Waterman, Webber, C. A., Weber, R. E., Weed, Westwood, Wheeler, Whipple, White, C. J., Wickersham, Wiggins, Wood, Young, C. H., Young, F. L., President.

Those who voted in the negative were: Aiken, Betts, Endres, Leggett, McKinney, Mereness, Nye, Parker, Smith, R. B., Stowell, Williams.

When Mr. Dick's name was called he said: "I desire briefly to explain my vote. I believe that the work of the Conservation Department is important, and that the Department would be dignified and made more stable by recognizing it in the Constitution. However, I am opposed to a nine-headed commission. I believe that a single-headed commission would make for economy and efficiency. Nevertheless, being in favor of the principle of the bill, and believing that the section to which I am opposed is not sufficient cause for me to vote against the bill, I vote aye."

When Mr. Sheehan's name was called he said: Mr. President, I desire to be excused from voting and will briefly state my reason. I direct the attention of the members to lines 12 and 13, page 2, and make the inquiry with reference to that, if it is intended to exclude from appointment as commissioners men living in the cities of Niagara Falls, Buffalo, Lockport, Rochester,

Syracuse and Utica, and in cities surrounding the Mechanicville water power system in this locality, who are using hydraulic power in the great manufacturing establishments of the State. Is it possible that we intend to exclude from membership in this commission men who are simply buying hydraulic power from these power companies all over the State? Of course, if they are officers, or directors of power companies, or stockholders, they should be excluded, but, if they are in the manufacturing business, and in connection with their business buy hydraulic power why should we put a bar upon them and say that they shall be denied a privilege that everybody else has a right to exercise? I am so much in doubt about it, Mr. President, that while I would like very much to vote for the bill and believe in it, I am so much in doubt about this particular provision, that I am going to ask to be excused from voting.

The President — The Secretary announces that 121 votes were cast in the affirmative, 11 in the negative. This proposed amendment, having received the affirmative vote of a majority of the delegates elected to this Convention, is adopted. The Secretary will read the title of the next order on the calendar.

The Secretary — No. 850, third reading No. 17, by the Committee on Judiciary: To amend Article 6 of the Constitution generally.

The President — The time for debate having expired, the Secretary will read the text.

The Secretary — *The delegates of the people of the State of New York, in Convention assembled, do propose as follows:* To amend Article 6 of the Constitution generally. Section 1. Section 2. Section 3.

The President — The Clerk will call the roll. All in favor of the adoption of the proposed amendment will say Aye; those opposed will say No.

Those who voted in the affirmative were: Adams, Ahearn, Aiken, Allen, F. C., Baldwin, Bannister, Barnes, Barrett, Baumes, Bayes, Beach, Bell, Berri, Betts, Blauvelt, Bockes, Brenner, Burkan, Buxbaum, Byrne, Clinton, Clearwater, Cobb, Coles, Cullinan, Curran, Daly, Dennis, Deyo, Dick, Donovan, Dooling, Doughty, Dow, Drummond, Dunmore, Dykman, Eggleston, Endres, Eppig, Fancher, Fobes, Fogarty, Ford, Franchot, Frank, Gladding, Green, Greff, Griffin, Haffen, Hale, Heaton, Johnson, Jones, Kirby, Landreth, Latson, Law, Leary, Leggett, Leitner, Lennox, Lincoln, Linde, Lindsay, Low, McKinney, Mandeville, Mann, Marshall, Martin, F., Martin, L. M., Mathewson, Mealey, Meigs, Mereness, Mulry, Nicoll, C., Nicoll, D., Nixon, Nye, O'Brian, J. L., O'Brien, M. J., Olcott, Ostrander,

Owen, Parmenter, Parsons, Pelletreau, Phillips, J. S., Phillips, S. K., Potter, Quigg, Reeves, Rhees, Rosch, Ryder, Sanders, Sargent, Saxe, M., Schoonhut, Schurman, Sears, Sharpe, Sheehan, Shipman, Smith, E. N., Smith, R. B., Stanchfield, Standart, Steinbrink, Stimson, Stowell, Tierney, Tuck, Vanderlyn, Van Ness, Wadsworth, Wafer, Ward, Waterman, Webber, C. A., Weed, Westwood, Wheeler, Whipple, White, C. J., Wickersham, Wiggins, Williams, Wood, Young, C. H., Young, F. L., President.

Those who voted in the negative were: Austin, Dahm, Unger.

When Mr. Bayes' name was called he said: Mr. President, I desire to explain my vote. The work of the Judiciary Committee viewed as a whole is excellent. I am obliged to say, however, that I regard the provision affecting the Court of Appeals as far from satisfactory. In the ordinary case, a year to a year and a half must necessarily elapse from the commencement of the action until the return on appeal is filed in the Court of Appeals. This makes it highly essential to keep its calendar up to date. In my judgment, no adequate provision has been made insuring this result. An amendment, Introductory No. 611, was submitted by Mr. Westwood and another, introductory No. 445, by myself, and referred to the Judiciary Committee, providing for the consolidation of the Appellate Divisions and the Court of Appeals in this single court to be known as the Court of Appeals. This plan would provide for but one appeal in all cases regardless of the amount involved, with automatic adjustment of the judicial course to handle the volume of business, whether much or little. I believe the plan presented by these two amendments sound in principle, and respectfully commend them to the consideration of the Constitutional Convention of 1935. I vote in the affirmative.

When Mr. Buxbaum's name was called he said: Mr. President, I desire to explain my vote. I regret exceedingly that the Committee has not permitted in this article an appeal from the city court direct to the Appellate Division; but inasmuch as in their wisdom they saw fit not to do it, and leave this article subject to that criticism, I vote Aye.

When Mr. Doughty's name was called he said: Mr. President. I would like to make a short explanation of my vote with regard to Section 6. I don't approve of the language used there; I don't like reference to convenience speed, and I think that the general structure of the English in that section is not such as should appear in a Constitution. However I am very heartily in favor of the spirit of it and with that slight objection I can very heartily say, Aye.

When Mr. Griffin's name was called he said: Mr. President, I beg leave to be excused from voting long enough to state my

reasons. I am in favor of this bill but I find one objection which I think ought to be called to the attention of the members of this Convention. Section 6 on page 8 states: that, "The Legislature shall act on the report of each such commission by a single bill and the Legislature shall not otherwise, or at any other time enact any law, prescribing, regulating or changing the civil procedure in the Court of Appeals, Supreme Courts or County Courts, unless the judges or justices empowered to make and amend civil practice rules shall certify that legislation is necessary". Now, the meaning of that is it is going to tie up any proposed amendment of the rules of procedure until such time as a constitutional amendment can be passed. It puts the judgment of the judges who are empowered to make these rules against the judgment of the entire Legislature. Now, I think that objection would be obviated by permitting the Legislature to change the rules on a two-thirds vote; and I suggest, not by way of amendment, but merely for the attention of the Committee, that on line 25, page 8, after the word "courts" these words be added: "except by a two-thirds vote of the members elected"; and then, on page 9, line 2, strike out the period, insert a semi-colon, and insert the words "In which case such amendment shall be passed by a majority vote of the members elected". In other words if the judges certify that an amendment of the law is necessary, the proposed amendment may be made by a majority vote of both houses of the Legislature.

Mr. President, I withdraw my request and vote Aye.

When Mr. Unger's name was called he said: Mr. President, I ask to be excused from voting long enough to explain my vote. I think this judiciary article is a very admirable piece of work, and a tribute to the unselfish zeal of the chairman of the Judiciary Committee and his fellow members. But there is one phase of it, to which I wish to register my objection before voting, and that is Section 8. In my judgment, as I have asserted in debate, that creates a loyal legion of Appellate Division pensioners, inexcusable, absolutely unexplainable to the public, and, for the first time in the history of the State, injecting politics into the judiciary. You will recall, Mr. President, how eagerly we scotched the judicial pension snake only a scant sixty hours ago. But his tail still wriggles, he shows signs of animation yet, and until the sun finally sets on this judiciary article, the judicial pension system in this State is not dead. I therefore vote No.

The President — The Secretary reports 135 voting Aye, 3 voting No. This Proposed Amendment having received the affirmative vote of a majority of the delegates elected to this Convention, it is adopted. The Secretary will read the next order.

The Secretary — Third Reading No. 19, Print No. 851: To amend Article XII of the Constitution generally, in relation to cities and villages and their powers of self-government.

The President — The time for debate having expired, the Secretary will read the text.

The Secretary — *The Delegates of the People of the State of New York, in Convention assembled, do propose as follows:* Section 1. Section 2.

The President — The Secretary will call the roll. Those in favor of the adoption of the Proposed Amendment will answer Aye when their names are called.

Those who voted in the affirmative were: Adams, Aiken, Allen, F. C., Angell, Austin, Baldwin, Bannister, Barrett, Baumes, Bayes, Beach, Bell, Bernstein, Berri, Betts, Blauvelt, Bockes, Brenner, Buxbaum, Clinton, Clearwater, Cobb, Coles, Cullinan, Deyo, Dick, Dooling, Doughty, Dow, Dunmore, Dykman, Eggleston, Endres, Fancher, Fobes, Ford, Franchot, Frank, Gladding, Green, Greff, Griffin, Hale, Heaton, Johnson, Jones, Kirby, Landreth, Latson, Law, Leggett, Lennox, Lincoln, Linde, Lindsay, Low, McKinney, Mandeville, Martin, L. M., Marshall, Mathewson, Mealey, Meigs, Mereness, Nicoll, C., Nicoll, D., Nixon, Nye, O'Brian, J. L., O'Brien, M. J., Olcott, Parker, Parmenter, Parsons, Pelletreau, Phillips, J. S., Phillips, S. K., Potter, Quigg, Reeves, Rhees, Roseh, Ryan, Ryder, Sanders, Sargent, Saxe, M., Schoonhut, Schurman, Sears, Sharpe, Slevin, Smith, E. N. Smith, R. B., Stanchfield, Standart, Steinbrink, Stimson, Stowell, Tierney, Tuck, Vanderlyn, Van Ness, Wadsworth, Wafer, Waterman, Webber, C. A., Weber, R. E., Weed, Westwood, Wheeler, Whipple, White, C. J., Wickersham, Wiggins, Williams, Wood, Young, C. H., Young, F. L., President.

Those who voted in the negative were: Ahearn, Barnes, Burkan, Dahm, Daly, Donovan, Drummond, Fogarty, Leitner, Martin, F., Mulry, Ostrander, Sheehan, Smith, A. E., Unger, Wagner, Ward.

When Mr. Burkan's name was called he said: I wish to be excused from voting and will briefly state my reasons. The provisions in this article, giving the State at large through the Legislature a veto over the local affairs of the city of New York is hostile to the sentiments and aspirations of the people of New York city. No control over its local affairs is granted to New York city under this article which is not subject to legislative nullification. In other words, the State at large through the Legislature is to retain a veto over the local affairs of New York city. The settlement of most important local problems in New York city will affect the framework of government and have to

be submitted to legislative nullification. Three of the most important problems before New York city now are: (1) Creation of a central purchasing agency; (2) Consolidation and the enforcement of building laws; (3) Consolidation of the agencies dealing with public markets. Each of these will involve changes in the framework of government. Any legislation agreed upon by the local authorities will still be subject to a possible political decision by the Legislature. It can only be construed as a continuing hostile intent on the part of up-State to keep its hands on the city's local affairs. I withdraw my request and vote No.

When Mr. M. J. O'Brien's name was called he said: Mr. President, I would like to briefly explain my reasons for voting. When this measure was first presented, I expressed the hope that we would at least give complete home rule to the cities of this State and that that could be done by granting the power and then protecting it. But in giving the power the Committee have gone further and placed certain restrictions around the right of home rule. Therefore, while the principle of the bill is sound, because it starts with the grant of home rule, I objected at the beginning, and still object to the nullification of the power when once granted, even with the accompanying principles to protect it, but on the whole the principle is right. It is in the right direction. It does give a meed of home rule, and I therefore withdraw my excuse, and vote Aye.

When Mr. Sears' name was called he said: Mr. President, I desire to explain my vote. I too think that where the charter has been made by a commission pursuant to a vote of the people, the nullification provision should not be effective. That would give to the city real home rule in that respect, and I think that this bill is defective in this respect. Nevertheless, on the principles succinctly announced by Mr. D. Nicoll, I vote Aye.

When Mr. Sheehan's name was called he said: I desire to be excused from voting and to briefly state my reasons. In the first place, in my opinion, this proposal would permit the local legislative body in the city of New York to transform the form of government they now have to a commission form of government, if they saw fit to do so. In the next place, I believe under its provisions the power of appointment of local officers can be transferred from the mayor of the city to the board of aldermen. In other words, the elected officers could be legislated out of office by the local assembly and their places could be filled by appointive officers. Secondly, this is the first time the State has ever taken such an advanced step toward the referendum pure and simple. If the time should ever come, Mr. President, in this State when the principle of the referendum with reference to the statutory

law is to be adopted, I want to swallow the thing in its entirety. I do not want to substitute for the representative form of government which is now written in our Constitution, a combination form of representative government and direct democracy. This proposition provides that practically every eighth year the citizens of fifty-four cities in this State, representing a population of probably seven millions of people, shall be assembled for what purpose? Not to pass upon the organic law, but to pass upon statutory law, about which they can know but little. Now, Mr. President, as I said before, because we only have a minute or two, so far as I am concerned, if the principle of the referendum is sound let us take it in its entirety. Why should we attempt to fool the people who believe in the referendum and at the same time attempt to fool the people who don't believe in it? I desire to withdraw my request to be excused and vote No.

When Mr. Barnes' name was called he said: I should like to explain my vote for a moment. I believe that this bill contains a vicious principle; that the citizens of the city should make their own charters, as if it were a constitution, and it would lead to a development of opinion already thoroughly expressed that the cities of this State are not a part of the State of New York, and it will come back to plague cities of this State, in my judgment. I withdraw my excuse and vote No.

The President — One hundred and twenty votes have been cast in the affirmative and 17 in the negative. This Proposed Amendment having received the affirmative vote of a majority of all the delegates elected to the Convention it is declared adopted. The Secretary will read the title of the next amendment on order of third reading.

The Secretary — No. 829, by the Committee on Cities: To amend Section 10 of Article VIII of the Constitution, by dividing it into two sections.

Mr. Low — In connection with this bill, Mr. President, which is the financial bill affecting cities, there were a number of amendments suggested when we discussed it on third reading. Mr. Sanders of the Committee will indicate the amendments which we are willing to accept. I think an agreement has been reached by the Committee and those who have criticised the bill.

Mr. Sanders — I offer the following amendment and move that the bill be recommitted to the Committee of the Whole with instructions to amend as indicated and report forthwith.

The Secretary — On page 6, line 17, after the word "indebtedness" insert "The Legislature may, however, enact laws authorizing the contracting of debts for the purpose of raising money

necessary to pay judgments recovered for other than contractual obligations."

Mr. Sanders — Without this Proposed Amendment, the section as it stands would forbid a city or village to borrow money for any excepting a permanent improvement. To compel a village or a small city to pay a large judgment recovered in a negligence action, or any other tort action, would impose a hardship which should not be imposed, and the purpose of this amendment is to take care of that situation. Of the amendments which have been proposed, the Committee is willing to accept the amendment offered by Mr. R. B. Smith, striking out the words: "The state engineer and surveyor" and inserting in their place "Superintendent of public works of the state." Also, Mr. Smith's amendment on page 6, lines 25 and 24, striking out the words "said sinking fund is insufficient to pay the same" and insert "the payment of the same shall have not been provided for by sinking fund." It is also willing to accept the amendment proposed by Mr. Austin. The amendment proposed by Mr. Deyo the Committee is not willing to accept and its purpose will be accomplished by the amendment which I have introduced. So far as the proposal by Mr. Stimson is concerned, to strike out the whole section, and substitute the language which Mr. Stimson incorporated in his amendment, the Committee believes that that would be a mistake; that would leave to the Legislature the control over the matters which the Committee believes should be incorporated in the Constitution. It will accomplish substantially the same thing for the cities of the State and correct the same abuses which the article introduced and adopted by the Convention with respect to State finances and the issuing of bonds by the State will accomplish for the State.

Mr. Austin — In spite of the fact, Mr. President, that the Committee has offered to accept the amendment which I proposed, I sincerely hope that the amendment proposed by Mr. Stimson will be the one which will prevail, and when I offered the amendment, I specifically stated that I should not press it, if Mr. Stimson's amendment was accepted by the Convention. The insertion proposed by Mr. Sanders, taking care of debts for judgments is merely an instance of one of the things which had been overlooked in the preparation of this bill in the first instance. I do not know but that there may be more things of this same kind, and there is not a man in this Convention, who does not know that within the past three or four days it has been utterly impossible to study this question, not only the law but the facts. What are the facts in various municipalities? I have no doubt there are some which should be remedied. I have no doubt that this bill in its present

form, with the amendments suggested by Mr. Sanders will remedy some of the defects, but, gentlemen, you don't know what difficulties it may plunge us into. That is the danger, and so far as I am concerned, as I say although the Committee has offered to accept my amendment, I earnestly hope that the one proposed by Mr. Stimson will be the one which will prevail, for it simply directs the Legislature to follow a general policy and leaves it to work out and remedy the evils that may exist.

Mr. Wickersham — Mr. President, a question. Is Mr. Stimson's amendment before the Convention at the desk?

Mr. Stimson — It was offered and it is on the printed list.

The President — The amendments which were pending when this matter was before the Convention last have been printed and distributed. There are three amendments by Mr. R. B. Smith, one by Mr. Stimson, several by Mr. Austin and some by Mr. Deyo. Those amendments, under the rule, will be submitted in the order in which they were submitted for action by the Convention. The amendment proposed by Mr. Sanders will follow. The amendment by Mr. Stimson and the motion to recommit with instructions to amend as indicated, stands No. 3 on the list of motions, upon which the Convention will have to vote.

Mr. Low — I would like to say for our Committee that we have no such doubt as Mr. Austin has expressed, and we believe the amendments which we have agreed to are sufficient and that the Convention may very properly pass the article as submitted.

Mr. J. L. O'Brian — I would like to say that this is a matter in which the Committee on County Government was also interested. This matter was discussed by members of that Committee at considerable length when the original bill was projected, and it seems to be the opinion of those with whom I have talked within the last day or so that the amendment offered by Mr. Sanders would meet the suggestion there, and present no dangers whatever to county finance. I am not authorized to make that statement on behalf of the Committee, but simply state that that seems to be the opinion of those members with whom I have had an opportunity to discuss it.

Mr. Wickersham — Mr. President, I must confess to a feeling of very great uncertainty about this amendment, and I think Mr. Stimson's proposal which would leave it to the Legislature after a thorough study of the subject which apparently has not been given by the Committee reporting this bill, and the results of which certainly have not been laid before this Convention will be preferable to the amendment proposed by the committee. Personally, I feel so much doubt about it that I should be unable to

vote for the bill in its present form, and I hope Mr. Stimson's amendment will be accepted.

Mr. Sanders — Is there anything you can point out, Mr. Wickersham, as to which you have doubt?

Mr. Wickersham — The difficulty is that there are so many things that may arise that, on the statement Mr. Austin made here when the bill was last under discussion, and Mr. Stimson, that I feel an uncertainty about it which I confess makes me unwilling to vote for the bill.

Mr. Sanders — Do you know that this bill has been submitted to the financial officers of the city of New York and other cities throughout the State and there was no objection?

Mr. Wickersham — The last statement I heard from your Committee on that point was that it had been sent to the Comptroller of the City of New York, and they had not had a reply from him expressing his opinion. If any reply has been received, I have not heard of it being communicated to this Convention, and I have not heard of it being communicated to the Comptroller of the State nor of any expression of his opinion regarding it; both of which would undoubtedly be of service to us in enabling us to form an opinion.

Mr. Low — I have a letter from Comptroller Prendergast about the bill when it contained also the privilege of exchanging serial bonds. That has been stricken out. No other amendment has been made that would affect the relation to the city of New York. This was dated August 13th. Mr. Prendergast says: "I have reviewed it very carefully, and have no further suggestion to make. I think it is in very good form. I think more and more that the provision limiting issues of bonds to those of serial character is very much in the public interest, as far as general work is concerned, because I am sure it is going to have a deterrent effect upon expenditures. At the same time I have not changed my views, but there are occasions when a departure from this policy may be in the public interest. I think you have endeavored to provide for that as fully as you could in the proposed amendment." What he refers to in his views is this, Mr. Chairman: He thinks, as he thought for the State, that it was better to leave the State and the city free to issue any kind of bonds, and not be confined to serial bonds, and, assuming that it is the policy of this Convention to confine the State to serial bonds, he thinks the bill is unobjectionable. I may say that the city of New York is permitted to issue bonds with a sinking fund for subway purposes, dock purposes and water purposes, and that that perfectly satisfies Mr. Prendergast. Now I have a letter from the Mayor of Troy, in which he says — "This law has

worked very satisfactorily in this city "— that is, Troy — " and I doubt very much if the Constitutional Convention can improve on the proposed amendment. I believe that the proposed amendment will work well, and will be generally satisfactory." The Mayor of Albany says that he has taken up the matter with the City Comptroller. " We believe that the matters treated in the added proposal should be left to each city to determine. If, however, the convention is to do anything in this connection we consider serials the proper thing. The matter of determining the probable life of the work or improvement for which the debt is to be contracted is clearly a matter which should be left to the City Engineer or Commissioner of Public Works of the city, and not to the State Engineer, to determine. By making a false certificate of the officer making such determination criminal, it seems the public will be amply safeguarded." Of course, the Convention realizes that the reference to the Superintendent of Public Works of the State is practically an ad interim suggestion to cover the needs of the period before the Legislature passes a general law. In other respects, as you will see, the Mayor of Albany criticises only the policy as to serial bonds, and it is in order to enforce that policy that the amendment has been proposed. I have also seen a letter from the Comptroller, I think, of the City of Rochester, to Mr. Tuck, in which he says the recent amendments have met all of his objections. It seems to me, therefore, that we have assurances from the city of New York, from Albany, Troy and Rochester, that the amendment is in very good form.

Mr. Stimson — I offered the amendment yesterday morning after there had been serious objections made by Mr. Austin in argument the night before which seemed to me well founded. I offered it, of course, solely in an effort to assist the Committee on Cities and not to cause any embarrassment to them. Indeed, it is rather embarrassing to me now to be apparently brought into opposition or antagonism to them. I have no such intention and I only rise now to call attention to one or two things that have been suggested that might, I think, lead to a misunderstanding. The difficulty that has come up is simply that we have not had time, at least so far as I myself am concerned, to be satisfied that the necessary foundation has been laid for putting into the Constitution itself the method under which all of the financial operations of the various civil divisions of the State shall be governed for the next twenty years. I still remain of the opinion that it would be safer and probably as effective to put into the Constitution merely a directory clause to the Legislature outlining the policy which we have adopted for the State finances and

providing that the Legislature should carry it out. That policy covers two great reforms which we are introducing into the State finances, namely, of limiting bonds to serial bonds and of providing that the length of life of the bond shall not exceed the life of the improvement. It seems to me that with such a provision in the Constitution, clear and explicit, the Legislature could be trusted and that it is the more appropriate agency to carry that into effect, so far as I, with my present incomplete knowledge, can judge. The only objection which was made which attracted my attention this morning was the fear that we might in some way infringe on the measure of home rule which we are planning to give to cities and to other subdivisions, but on looking hastily at the city amendment which we have just passed it seems to me clear that that is not the case and that it would be quite open to the Legislature to make the necessary provisions in the form of general laws applicable to all cities of a class and applicable to all other subdivisions of a class.

Mr. Low — Under the city amendment which has just been adopted the Legislature cannot pass laws with reference to cities as a class; it must pass laws with reference to cities as a whole. There is a distinction.

Mr. Stimson — I used language inadvertently. I meant to say that it applied to all the cities of the State, treating cities in general. I do wish to say this, that under the proposal of the Cities Committee now to adopt Mr. Austin's amendment, it seems to me that in one vital respect they are not going as far as my amendment in the direction of reform because in the amendment which Mr. Austin has offered, which they are willing to accept, they strike out on page 5, line 22, the words "substantially equal annual", coming before the word "instalments". Therefore, the kind of bonds which would be authorized under this is only bonds which shall be paid in instalments, not necessarily annual instalments, and the provision as thus amended, on looking it over hastily, does not seem to me to provide for serial bonds at all, but would be satisfied by a very different kind of bonds. I do not care to appear any further in the light of a critic.

Mr. Austin — Mr. President, I would like to call attention to one thing, in view of the letters which Mayor Low has read. I think I am correct in the statement, am I not, Mr. Low, that all of those letters were written to you, with the exception of the last letter from the Comptroller of Rochester, when the bill was in its original form?

Mr. Low — Yes.

Mr. Austin — I merely point this out, that when the bill was

in its original form, and the Committee sat down to examine it, a number of very serious defects were found in it, and yet these three or four mayors have written to Mr. Low that they approve the bill and that it was all right. Therefore, I do not think that this Convention can pay any attention whatever to the snap judgment which is expressed in the letters which were written to Delegate Low upon the subject. They were obviously based upon a very hasty examination of the proposal, without a realization of what it is.

Mr. Low — Mr. President, there are evidently two alternatives offered; one proposed by Mr. Stimson, and the other by the Committee. My suggestion would be that we vote first on Mr. Stimson's proposal. If that is adopted, it replaces the section which the Committee has suggested. If it is defeated, then we can vote on the proposal of the Committee.

The President — The Chair suggests that the two amendments of Mr. R. B. Smith, which preceded Mr. Stimson's proposal, if they are accepted by the Committee, might be agreed upon here, and then Mr. Stimson's proposal can be considered. All in favor of recommitting with instructions to amend as indicated in the two motions made by Mr. R. B. Smith, which were accepted by the Committee, and to report forthwith, will say Aye, contrary No. The motion is agreed to. The question now is upon the motion of Mr. Stimson to recommit with instructions to amend as indicated and report forthwith. The Secretary will read the amendment which is proposed by Mr. Stimson.

Mr. Stimson — Mr. President, I have just submitted to the Secretary a couple of verbal changes in that, simply for improvement of the language I request that he read it in the form in which I have submitted it.

The President — The Secretary will read as indicated.

The Secretary — By Mr. Stimson. Substitute for section 12: The Legislature shall provide for the method and limitations under which debts may be contracted by the cities, counties, towns, villages and other civil divisions of the State, to the end that such debts shall be payable in annual instalments, the last of which shall fall due and be paid within fifty years after such debt shall have been contracted, and that no such debt shall be contracted for a period longer than the possible life of the work or object for which the debt is to be contracted.

The President — The question is upon the motion to recommit with instructions to amend as read by the Secretary, that being a substitute for section 12. All in favor of the motion will say Aye, contrary No. The Ayes appear to have it. The Ayes have it and the motion is agreed to.

Mr. Low — I move the adoption of the whole amendment as amended. We have already passed the first two sections, and this is a substitute for the third.

The President — The amendment as amended stands upon the order of third reading. The other amendments which are pending are amendments to the section for which Mr. Stimson's amendment is a substitute and are therefore disposed of by the substitute. The Chair desires the attention of Mr. Stimson. The Secretary suggests that Mr. Stimson should formally withdraw his amendment as printed.

Mr. Stimson — I accept the suggestion and withdraw it.

The President — The Proposed Amendment to the Constitution therefore now stands on the order of third reading as amended. The debate upon it is closed and the amendment will lie over to be reprinted.

Mr. Low — Keeping its place on third reading.

The President — Keeping its place on the order of third reading. The Secretary will read the title of the next order upon the third reading calendar.

The Secretary — No. 845, by the Committee on Canals. To amend section 8 of article VII of the Constitution, in relation to the disposal of canal terminals and surplus waters of the canals and the title to State appropriations.

Mr. Wagner — While I was called to my room to answer a telephone communication, the roll was called upon the Judiciary article. I would like to have the record show that, had I been present at the time the roll was called, I would have voted in the affirmative.

The President — Without objection, the Secretary will note that statement at the close of the statement of the vote upon the Judiciary article.

Mr. Harawitz — Mr. President, I make the same request. I was called out of the chamber just as the roll was being called, and, had I been present, I would have voted in the affirmative on the Judiciary article.

The President — Without objection, the same order will be made.

Mr. Foley — Mr. President, may I make the same request?

The President — The same order will be made.

Mr. Newburger — May I make that request with reference to both the Judiciary article and the Home Rule article? Had I been present, I would have voted in the affirmative.

The President — Without objection, the same order will be made.

Mr. Eisner — I would like to make the same request. I would have voted in the affirmative on the Home Rule article and in the negative on the Judiciary.

The President — Without objection, the same order will be made.

Mr. Donnelly — I desire to make the same request. I would have voted in the affirmative on the Judiciary and Home Rule articles.

The President — That order will be made.

Mr. Byrne — I desire to be recorded in the affirmative on the Home Rule article. I was out of the chamber.

The President — You cannot be recorded in the affirmative.

Mr. Byrne — Rather, had I been present, I would have voted in the affirmative.

The President — It will be noted that, if Mr. Byrne had been present, he would have voted in the affirmative. The bill reported by the Committee on Canals, third reading No. 22, is now in the Convention and open to debate under the rule.

Mr. Clinton — I would like to ask — some of the delegates have tried to answer — whether there is a time limit on the individual presentation of views in the debate. I hear it is five minutes.

The President — That is correct. Under the rule one hour's debate is allowed after the reading of the title, before the reading of the text, and speakers are limited to five minutes.

Mr. Clinton — I understood, Mr. President, that by unanimous consent the proposer of the measure could have a little further time.

The President — Mr. Clinton will suspend for a moment until there is less confusion. Will the delegates be good enough to take their seats?

Mr. Clinton — This proposal has received the careful consideration and study not only of the Canal Committee but it has been presented to and passed upon by the drafting department before the measure was introduced. I wish to say further that the measure has received the careful scrutiny of all the interests of those localities which might be affected by the proposal, and that it has received the careful scrutiny of the Revision Committee with a view to the limitation of their powers as to suggesting amendments. As a result of the studies so made, the bill has been amended twice, with a view to removing possible objections to its provisions, to meet the views of the Revision Committee and to cure one or two slight defects. I wish to add further that in Committee of the Whole the bill was fully considered and that amendments then should have been introduced. I understand that amendments are to be introduced. One, as suggested by Mr.

Wickersham, in the notice which he gave, merely affects phraseology. The other will affect a principle of the bill, and when that amendment is considered I shall ask permission to speak about it. We have reached a period in our deliberations which makes any amendments now introduced dangerous to the passage of this bill, and it is plain, I think, that those here who may vote for amendments will either actively or unconsciously be voting to retard the progress of the bill and perhaps jeopardize its passage. The other amendments, which I understand will be introduced by Mr. Sears, would simply reverse the action of the Committee of the Whole where the proposal was progressed to third reading by an extremely large majority. I wish to say this, simply as to the purpose of the bill. It is to do what ought to have been done before, but could not have been done: "To define what the canals of the State are that are to be protected by the constitutional provision." Two ways were open, one to physically disturb the canal and the feeders and the reservoirs — a practical impossibility, and it therefore was done by reference to the improvement of the statutes. The bill was also intended to take care of a situation which has become a scandal in this State, and that is without interfering with vested rights to regulate in such a way that the State authorities would have full control of the waters of the canal, the leasing of surplus waters of the canal. The bill also was intended to and it does introduce a clause which will prevent the extension of a principle of law that apparently was read into the improvement acts by the Court of Appeals. The improvement acts provide for the appropriation of lands for canal purposes and the Court of Appeals (I will not stop to read it on account of the shortness of time) have practically said, if the opinion of Judge Collins represents, as it is assumed to do, the opinion of the majority of that court, that the statutes which provide for the appropriation of lands for canal purposes, and which have provisions in them which call upon the State to pay the full value of those lands, do not necessarily vest in the State the title in fee to them. The court seems to have thought that that was necessary in order to sustain a contract with which I find no fault whatever, with the New York Central Railroad for the construction of a bridge across a cut through its embankment, the cut being made for a change in the route of the Barge canal. The bill includes in its definition of the Barge canal, simply those parts of the canal which are already reserved by the statutes of this State. It adds, necessarily, as a part of the system, slips 1 and 2, connecting the only terminal, which is available for lake, canal and railroad traffic, the Erie basin, with the canal adjacent to that,

which furnishes the exit to the Buffalo river. The bill also protects the canal terminals on which the State is spending nearly twenty millions of dollars. It prohibits the sale of lands or other disposal of the same except under general laws. I wish to say, Mr. President, there is one other provision here, and that is to prevent the giving away of canal lands which will be abandoned when the Barge canal is completed, by special acts, and it provides that the disposal of abandoned canal lands must be by general laws.

Mr. President, I sincerely hope there will be no amendment to this proposal, unless it shall be made to appear that through an oversight, a radical mistake has been made. One word more: Mr. J. L. O'Brian, as he afterwards characterized it, in discussing another bill, criticising it, said that it might affect future amendments to the Constitution — that it might prevent the obtaining of a sufficient vote to pass constitutional amendments affecting only localities. He referred to the increase of the number of judges in a district, and then he very suggestively referred to the Buffalo situation, and described it as a local matter. It is not a local matter. As I have said, the bill is pointed to the preservation, or at least its effect is the preservation of all terminal facilities which we have in Buffalo, which are needed and which will be needed in the future; and that is a State matter. We have our Canadian friends building a new Welland canal, at an expense of millions, to accommodate the largest freighters of the lakes. We have our Canadian friends spending hundreds of thousands of dollars on the terminal at Port Colborne, and providing for the same at the new terminal on Lake Ontario. If we do not have at the termini of this canal sufficient terminal facilities, we not only cripple the local traffic, but we almost destroy the benefit of the canal as a carrier of through freight, and as a regulator of freight rates. It is, therefore, a State issue and not a Buffalo issue. One word more. It is as important, I may add, to the city of New York, and every locality that the canals reach, as it is to the city of Buffalo and it is of great importance to the city of Buffalo, the eastern and terminal harbor on the Great Lakes system, that we should have these canal facilities, these terminal facilities. Now, Mr. President, perhaps forestalling an argument from my friend, Mr. Sears, in the amendment he will present, the opposition in Buffalo looks only to the building of a railroad station at the sacrifice of our terminal facilities and the result is that those interested for business or property reasons, have been flooding this Convention with literature, opposing a measure which is directed to the interest of the State of New York, for their personal reasons: I say men interested in it, because the men who are interested in it and the men to whom the newspapers look for

advertisements, are the great department stores on the lower part of Main street, the hotels in that locality, and the owners of property, who think that unless these terminal facilities be sacrificed and a great passenger station put up on the terrace, their business will be taken away from them and their property lessened in value. I have stated the fact before, and I reiterate it that the great station of the New York Central Railroad Company, the through passenger station, cannot, if competition between the New York Central Railroad Company and the Pennsylvania is to be kept in a position where the Central can compete for the through passenger traffic to advantage, be constructed on the terrace, and it never will be. I say this, not only because the terrace station project is as a railroad proposition absurd, but I say it because for several years at divers times, I have not only investigated the subject but talked with those who influence if not dictate the policies of that railroad. Mr. President, aside from these men who are represented on the Board of Directors or the Trustees of the Chamber of Commerce, and who, although asked, have never given us an opportunity to present the question to the Chamber of Commerce, by calling a meeting of their chamber —

The President — The gentleman's time has expired after a good deal of neglect of duty on the part of the Chair.

Mr. Clinton — I know that, Mr. President, but I have just one word more to say, if the Convention will permit me; that, in opposition to that element, we have the support of the Central Council of Business Men's Association in Buffalo, who represent a membership of business men in that city of nearly twice the membership of the Chamber of Commerce, and when it comes to a question of navigation and those who use the canal, who know what is needed, they are unanimous that the facilities of Buffalo must be preserved. I meant support in opposition to the Chamber of Commerce.

Mr. Wickersham — We all feel, and I think I voice the entire sentiment of the Convention — I say we all feel such great confidence in Mr. Clinton as guardian of the canals that we are willing to accept almost anything he brings here and recommends to us without inquiry, and I would not press the amendments which I suggested yesterday, were it not for one thing. I am suggesting two amendments, one I would not press if it stood alone, a mere matter of phraseology. I think that it is rather inconsistent to say in one sentence that no easement shall be granted, and in the next sentence to define how it shall be granted, and I think if the bill is amended at all the words "except as herein otherwise provided" should be inserted. But there is one clause in the bill which I think ought not to be there. That is the paragraph on page 3, which says that, "Real property which has

been or which may hereafter be appropriated for canal purposes shall be deemed to be held by the State in fee unless expressly taken for temporary purposes." Now, the Court of Appeals, in the case which has been referred to here on several occasions, expressly said that the acts under which land has been acquired for the purposes of the canal did not require the State to take a fee. I don't know whether the land so acquired has been acquired in fee or not, but if it has not, we cannot make it so by saying it shall be deemed to be so, and I don't think we ought to write into the Constitution a provision which may be an obvious absurdity; which may be an impairment or attempt to impair the obligation of contract. It seems to me wholly unnecessary and therefore I move to strike out the three lines, 16, 17 and 18 on page 3. I don't propose to waste time in arguing it, but I do think we ought not to put that clause in the Constitution.

I submit the following amendment.

Mr. Cullinan — What title would you consider the State to receive when the property is merely appropriated under the statute for the use of the canal and no statement as to character of the property conveyed or appropriated?

Mr. Wickersham — Well, I can only say to you in the language of the Court of Appeals that the various acts do not require a fee to be obtained by the State, and Judge Collins, in writing the opinion of the Court of Appeals, says, "This act", referring to the original acts under which these lands are acquired, "contains no other provision expressive of an intent of the legislature as to the interest or estate to be taken". The Canal Act, Laws of 1894, omitted the requirement of the revised and anterior statutes, "that the state should take the title in fee simple of the lands appropriated", and so on, and so on, not going over it now; but under the opinion of the court the extent of the title depends upon what was done in each individual case. It goes back to 1894. Now how can we say here that what has been done during twenty years past under a statute that did not require a fee to be acquired, shall be deemed to have vested the State with a fee simple.

Mr. Cobb — I share with the other delegates here the most sincere admiration for the Chairman of the Canals Committee, and it is with great reluctance that I rise to offer amendments to his proposition, but I feel that I ought to do it. I am, therefore, sending them to the desk, and would like to say a few words regarding them.

The President — The Chair will read the amendments by Mr. Cobb.

The Secretary — By Mr. Cobb, on page 1, line 5, before the word "or" at the end of the line insert the words "the improved barge canal". On line 6, before the word "canal" insert the word "any". On page 2, after the bracket on line 13, strike out the balance of the page. On page 3, strike out all italicized matter to and including line 15, and insert the following: "The foregoing provision shall not apply to such portions of the existing canals as, by reason of changes made pursuant to laws heretofore enacted for the improvement of the canals of the state, shall no longer be required for canal purposes; but no sale, lease or other disposition thereof shall be made until the same shall have been abandoned by general laws enacted pursuant to the recommendation of the Canal Board. Any such sale, lease, or other disposition shall be subject to the approval of the commissioners of the land office, and secure to the state the fair value of the property affected".

Mr. Cobb — Now, Mr. President, this bill must, it seems to me, offend anyone's sense of propriety, and it certainly offends against the usual precedents for the making of Constitutions. Now, when you come here and you are told by such distinguished men as the President of this assembly and other distinguished constitutionalists that we are dealing with the fundamentals of government, and you find we have inserted in here, in this Constitution, which is to be a model for other states, and which is to be voted on, we presume, by the people intelligently, a provision that canal slips numbers 1 and 2 in the city of Buffalo can never be sold, while all the other canal slips of the State that are abandoned, all other property in connection with the canal that is no longer used, can be sold with the consent of the canal board upon vote of the Legislature, it must cause us to pause — now, why do we need special legislation for Buffalo, why do we need to go into the city of Utica and say that in the city of Utica that portion of the existing Erie canal between Schuyler and Third streets may be sold or otherwise disposed of on condition that a flow of sufficient water from Schuyler to Third street to feed that portion of the canal east of Third street be maintained? I would be willing the State should suffer some hardship rather than to incorporate that into the Constitution. How can the voters in my district know that the Oriskany creek is insufficient to furnish necessary water to the Utica level, or whether slips No. 1 and No. 2 in Buffalo ought to be abandoned? It seems to me it would strike one at once that such a discussion as we have had here this morning as to whether these canal slips should or should not be run by the interests back of this or that movement, is not

proper for a Constitutional Convention. The State is to have a canal board, consisting, under our plan here, of Lieutenant-Governor, Superintendent of Public Works, the Speaker of the Assembly, the Secretary of State, the Comptroller, the Treasurer and the Attorney-General. Now, these canal slips that are so precious cannot be sold without the consent of those men, then, without an act of the Legislature, approved by the Governor, and after the sale has been completed, it must then be ratified by the Board of Canal Commissioners, consisting heretofore of the elective officers of the State. Now, we have to submit our property in Syracuse, in Albany and other parts of the State to general rules and regulations. Why this tenderness for these particular portions? This proposition that I have sent up here will permit these State officers that I have named in their good judgment when lands are no longer used or required for canal purposes to permit their sale by the Legislature, provided they do it by general law, and insure the full and fair value of the property. Now, I offer the second amendment and I have only a moment to speak of it: That is, to strike out, beginning in line 22, this prohibition, page 3: "but this provision shall not authorize the use for other than navigation purposes of water diverted from the Black River water shed to feed the Erie canal." Now the State will come into possession of a number of canal feeders. It will have a lot of water that it has heretofore used for canal purposes to sell to mill owners on the streams into which this water is discharged. The provision introduced by Mr. Clinton seems very proper, but up jumps a delegate from the Black River district and proposes this amendment: "But this provision shall not authorize the use for other than navigation purposes of water diverted from the Black River water shed." Well, why the Black River water shed? Why should the State be refused permission to sell to mill owners or to lease those waters that belong to the State from the Black River water shed and the Otisco water shed and the Skaneateles water shed and the other water sheds be subject to the general provisions of law? The trouble with this measure is that it is special legislation of the most particular character. It is legislation that the Legislature has refused to act on. We must trust something to the State officers, and when all the principal officers constitute the Canal Board I think Buffalo can afford to leave it to them to say where and when and how these slips shall be handled. I certainly would be unfaithful to myself, and I would feel derelict in my duty if I failed to call these matters to the attention of the Convention. This amendment we have prepared has been gone over carefully by Mr. Marshall, and various delegates, and I believe that there is no doubt

that it accomplishes exactly what we want, namely, of permitting the constitutional officers of the State to sell by general laws lands no longer used.

Mr. Sears — I want to endorse as heartily as I can every word said by Mr. Cobb. I simply ask this Convention not to include in the Constitution special legislation in relation to the city of Buffalo. That is the only thing that I am contending for here, in respect to this bill. Now, the laws of the State, as they now exist, fully protect the lands of the State and its canals. These lands cannot be abandoned without the approval of the Legislature and the Canal Board, and they will not be abandoned if there is any necessity for them for the purposes of navigation. Now, in the city of Buffalo, there is a difference of opinion of whether the particular end of the Erie canal, used as such, and which has been designated for improvement, should be retained or should be abandoned. That is the contentious question. All I ask is that it be not decided by this Convention which has not had an opportunity to see the situation and to know of the details. Now, I want to point out that it is not the Central Business Men's Association against the Chamber of Commerce, it is a large part of the city of Buffalo against another large part of the city of Buffalo. On one side is the Chamber of Commerce and the public officials, and I have read into the record letters from the Mayor, who is a Democrat, and from the Superintendent of Public Works, who is a Republican. They both agree, with the Chamber of Commerce, this is a matter which should be left for further determination by the public authorities, without having the subject crystallized here by the vote of this Convention. I want to point out that this bill refers to certain statutes in relation to canal improvements by chapter and year, but one of the most important measures in relation to canal improvements is particularly omitted from this bill and that is chapter 741 of the Laws of 1911, and that is the referendum on canal terminals and that particular measure provided that this question should be left open for further determination. Now, I ask the Chairman of this Committee why, in designating particular laws in relation to canal improvement, this particular law has been omitted. I think it is the most vicious kind of special legislation.

Mr. Clinton — The reason is that the statute referred to in here as an amendatory statute includes chapter 801 of the Laws of 1913, which saves this portion of the canal, and the answer to the gentleman's question why we did not put in the other statute is that that vested in the canal board the power to abandon a portion of that. In other words, he would return to a

statute which had already been amended by the Legislature making that portion part of the barge canal system.

Mr. Sears — Mr. President, the Law of 1913 to which the gentleman refers is one in relation to toll bridges and its title is to amend the canal law of 1903, in respect to toll bridges, and in doing so it repeats and to include in it the language of the statute of 1903 verbatim, and includes only this repetition, excepting a single sentence giving the superintendent of public works authority over toll bridges, and I assert that that had nothing to do with the law of 1911 to which I refer. Now, I merely state this, Mr. President, to show that there is a great question upon the matter, and a question which I contend should be left for further determination by the public authorities, and therefore I ask you not to decide this question here for all time or at least for the next twenty years, but to leave it as a large part of the people of the city of Buffalo think it should be left, to be determined by the public authorities of the State.

Mr. J. L. O'Brian — I should like to endorse, if I could, the view expressed to this Convention by Mr. Sears. It is a matter of very little moment to you whether the Erie canal stub end in Buffalo should be or not abandoned. Perhaps it is a matter of very slight moment to me personally; but the fact of the matter is this, that the people have voted on the subject in their referendum. This part of the canal was to be abandoned, and the Legislature has not, in the opinion of those who take my view of the matter, power to deal with it, and you are being asked to change that policy and put back into the Constitution this stub end of the canal in such manner that it cannot be abandoned without an amendment to the Constitution of the State. Now, you know nothing whatever about that matter. You have been deluged with matters, talking about railroad interests on the one side, and you have been deluged with newspaper clippings on the other side. There is no public necessity, so far as the State is concerned in this matter, which cannot be disposed of by the Legislature adequately. All that we ask is that the present status be preserved. On the other hand we have done in this Convention, I believe, a great constructive work. We are going to submit to the people of the State a Constitution which every man believes to be a great step in advance. Now, in the city of Buffalo, to-day, rightly or wrongly, it makes no difference — in the city of New York to-day, every newspaper has editorially condemned this bill; every newspaper has condemned the work of this Convention in this particular, because they say this Convention has gone out of its way in advancing this matter to third reading, to slap the city of Buffalo in the face and dictate to that city what

its future development should be. Now, those newspapers — gentlemen, it is all very well to say they are controlled by advertisers; it is all very well to say that their owners have personal motives, but those newspapers are read all over western New York, and if you persist in this course desired by the Committee on Canals to force this into the Constitution you will anger these people and infuriate them and stir up a great bulk of opposition in that section to the Constitution.

On the other hand, if you accept Mr. Cobb's amendment, leave the situation as it is to-day, you anger nobody. Nobody that I know of has any objection to that course, excepting a few people that along with Mr. Clinton prefer to see this put into the Constitution. Now, gentlemen, I ask you earnestly, not to weigh my views, not to weigh Mr. Clinton's views, but to look at the facts staring us in the face, that this is a very sore spot, and with the mayor of the city, the department of public works of the city, the terminal commission of the city, the directors of the chamber of commerce and every newspaper in the city of Buffalo attacking this proposition — I ask you not to put it into the Constitution and to pay some heed to that sentiment and let the Legislature deal with the proposition, and let us not endanger in that community the popular sentiment which we have to arouse in favor of this Constitution. On the subject of Mr. Wickersham's amendment, wholly unrelated to what I have been talking about, I think there should be, without any doubt, an amendment accepted striking that matter out of the Constitution. With all due respect to the chairman of the Committee on Canals for whom I have always entertained the most affectionate regard, I think that provision which states that as to all canal property heretofore acquired by the State, the fee shall be deemed now to be held by the State, is one of the most extraordinary propositions I have ever heard advanced. If that were brought up before the Legislature, we would laugh at it. Gentlemen, if the State has not the fee in the canals, some of the canal property, somebody owns that fee, and by putting that clause in this Constitution you cannot override the Constitution of the United States and deprive that man of his property without due process of law. That is unrelated to the matter of the sentiment in Buffalo, but I call it to your attention, because it is a most extraordinary and anomalous provision to include in the Constitution. Gentlemen, I ask you once more to believe that those of us who are opposed to Mr. Clinton's matter have no personal interest in the matter except the desire that the Constitution shall not be prejudiced at Buffalo.

The President — The gentleman's time has expired.

Mr. Dunmore — Mr. President and gentlemen of the Convention: The gentleman from Syracuse objects to the language in this amendment. He says it is offensive to him. It seems to be a mere matter of sentiment, but why a gentleman living sixty miles away from the city of Utica should think it is his duty to interfere in the local affairs of that city is more than I can understand. He says the language is unusual. Well, the conditions are unusual. When the Erie canal was built the city of Utica was a village and the people in that village, and after it got to be a city, supposing that the Erie canal was to be the great waterway from Buffalo to the Hudson river for all time, expended millions of dollars in the erection of manufacturing industries on the banks of that canal, so that they might have the benefit of water transportation to bring raw materials to those factories and so that they might have the benefit of the canal in transporting the product of those factories away. When the Barge canal was built, it was built a mile north of the city. Then the question came up, raised by some of the people there who had no interest in the manufacturing industries but who simply wanted to benefit their own property — they started a movement to have the canal abandoned through the city of Utica. That would spell bankruptcy for some of these manufacturing industries if it were carried out. They would either have to go out of business or move away. As I said the other day, when this question came up, when this precise motion was made by the gentleman from Syracuse and was beaten overwhelmingly in this Convention, as I trust it will be to-day — as I said then, the two factions in the city got together and agreed upon an amendment which is satisfactory to everybody there. The representatives of both of those factions appeared before the Canals Committee and presented their sides of the case, and, with the aid of the chairman and the other members of the Committee, this amendment was agreed upon so as to take care of the interests of the city, so as to take care of the manufacturing industries of the city of Utica and so as to provide for the benefits which the people in the city of Utica wanted for their individual properties. That is by taking the water of the canal from Schuyler street through a conduit to Third street the bridges through the city can be lowered, the streets can be paved, and those passing through the city would not know that there was a canal running underneath. At the same time the manufacturing industries in the eastern part of the city can be connected with the Barge canal by way of the Mohawk. Those in the western part of the city can connect with the Barge canal by way of Rome so that the interests of everybody can be taken care of — the State, the manufacturing industries and those that want a part of the Erie canal abandoned.

Now, permit me to say that no abandonment of the Erie canal now, or any general language that would authorize the abandonment of the Erie canal can accomplish that purpose. It can only be done by special regulation and that is the special regulation provided here, and I hope that the amendment of Mr. Cobb will be defeated.

Mr. Cullinan — Mr. President, and gentlemen of the Convention: We have spent a great deal of money for canals in this State, upwards of two hundred millions of dollars, and if there were no abandoned canal lands resulting from the improvement of the Barge canal there would be no cry from Buffalo, no cry from Syracuse. Just the moment that it was determined that certain lands of the old canal were to be abandoned, there was immediately a movement to seize those lands. Well, now, the canal belongs to all the people of the State and in Buffalo, the people of the city of New York who are interested in retaining its commercial supremacy are interested in keeping sufficient of the old canal lands in Buffalo, as Mr. Clinton has described, for the purpose of terminals. A canal without terminals is like a railroad without a freight or passenger station. These statements of Mr. Cobb and from Buffalo have been considered by the Canal Committee, with representatives from all over the State. We have looked them all over, and have considered them from the perspective of the State, and not from a locality. These questions have been seriously and we believe properly considered by the Committee, and the Committee comes here with a unanimous report from this bill as advocated by Mr. Clinton. Now, with reference to the position taken by Mr. Cobb, none of these lands are to be sold by special laws, none of these things to be done with reference to the abandoned canals are to be in obedience to special laws, but here is a general provision in the interest of the people of the entire State; that this property which they own and which is to be abandoned — it reads as follows: "The abandonment, sale or other disposition of canals or canal property shall be under and pursuant to general laws only and such laws shall secure to the State the fair, appraised value of the property which may be abandoned and sold." Gentlemen, can you frame a phrase more comprehensive and more protective, and at the same time in the interest of nobody than that particular sentence? It is the keynote of this bill, and I respectfully submit that the bill should be passed without a single amendment.

Mr. Cobb — Did the gentleman observe that that keynote that he speaks of is retained without the special provision in the amendment that I offered, the same provision as to general laws?

Mr. Cullinan — Well, but your amendment does not harmonize with the general bill.

Mr. Cobb — Well, it harmonizes with anything that is general.

Mr. Landreth — Mr. Cobb has asked the question why diversion from the Black river, in excess of the needs of canal navigation, is prohibited by this act and not other streams? It is necessary to state that the Black river occupies a peculiar relation to the canal that no other stream occupies. The canal crosses the State from Buffalo to Albany and traverses the watersheds of many streams. Many of these streams are used for the purpose of supplying the canal with water. The Black river, however, does not lie in the territory covered by the canal. The canal does not cross any portion of the drainage area of the Black river. Many years ago, I think prior to 1850, water was diverted from the Black river by means of feeders into and through the Black River canal into the Erie canal. Certain definite amounts of water were deemed to be necessary for that purpose and they were diverted and the private interests affected were compensated for the amount of water diverted for public purposes of navigation. Now, this clause of the act simply protects that drainage area from diversion for the rental of surplus waters in excess of that needed for navigation purposes. It is a reasonable provision.

Mr. Mereness — Mr. Landreth, have you stated whether there was any specific quantity of water permitted to be diverted from the head waters of the Black river, originally taken?

Mr. Landreth — I should say it was a definite amount.

Mr. Mereness — How is it defined?

Mr. Landreth — A certain number of cubic feet per minute.

Mr. Mereness — Then the State appropriated a specific amount of water for purposes of the Barge canal, and if a new appropriation is made of water the riparian owners will be entitled to a certain compensation, and in that case it would be unnecessary to have this special provision in the Constitution.

Mr. Clinton — This provision with regard to the Black river does not interfere with the rights of riparian owners, nor the right of the State to divert more water for purposes of navigation.

Mr. Mereness — I understand that, Mr. President, and for that reason if the precise quantity is defined in the original taking, it seems to me that the additional quantity taken by the State would mean additional compensation to the riparian owners.

Mr. Lindsay — Mr. President, as one of the Canal Committee, I feel that the Committee has gone carefully over every provision of this bill time and time again. I do not live in the city of Buffalo, and it may be that I do not understand the exact conditions there, but I live very close to the city of Buffalo, and I know enough of the situation to know this, that the difficulty in regard to this is simply a matter of a controversy between two

parts of the city as to which shall get the depot of a certain railroad. That is all there is to it; and one side to that controversy would vote for this bill and the other side would not. Now, this is a State matter we have here, and why should we undertake to settle these difficulties between those two sides. We don't have to consider that at all. The fact is that these slips at the city of Buffalo are at the end of the present canal. They are at the outlet of the present canal. They are at the terminal of the present canal in the city of Buffalo. The terminal questions at that end of the canal have not yet been fully settled, and until they are fully settled, the State should not, in my opinion, release one of these slips or any portion of its present holdings in the canal. If the city of Buffalo should decide or desire to build a dam across the only entrance to the Erie canal, it would certainly be a matter of considerable import to the people of the State, notwithstanding the fact that it was in the city of Buffalo. It has appeared, as far as I can see here and in the debates, that there is no present prospect of the use of these slips for the purposes of a depot at all. But they are at the terminal, they are dug, the State has paid out its money for the property and it belongs to the State and it might not do any harm to hold on to this property until we know what is going to be done with the terminal at that end of the canal, because they, to a large extent, govern the use of the canal throughout the entire State.

Mr. Clinton — May I say a word in regard to Mr. Wickersham's Proposed Amendment and in regard to Mr. Cobb's amendment. Mr. Cobb's amendment — I don't know why he introduced it — is directed to attaining the ends of those who want to abandon these necessary portions of the canal, necessary for terminals, in Buffalo. It was fully discussed in the Committee of the Whole and was beaten by a majority which has not obtained upon the discussion of any other bill. Mr. Wickersham's amendment is entirely unnecessary and the provision ought to be retained. He provides that real property — it has been discussed in the Revision Committee, the whole thing — which has been or which hereafter may be appropriated for canal purposes shall be deemed to be held, etc. We did not even use the word "presumed" because it left open the question whether the courts would say it was a conclusive presumption or whether it was a mere presumption of fact. We did not want to foreclose the courts from passing upon the question and so we used the word "deemed", which has not the technical force of "presumed."

Mr. Wickersham — The authorities are not in accord on that, Mr. Clinton.

The President — The time for debate is closed. The Secretary will read the first amendment.

The Secretary — By Mr. Wickersham. On page 1, line 6, after the word "nor" insert the following "except as herein otherwise provided."

The President — The question is upon recommittal of the bill with instructions to amend as read and to report forthwith. All in favor will say Aye, contrary No. The Noes appear to have it. The Noes have it, and the motion is lost. The Secretary will read the second motion.

The Secretary — By Mr. Wickersham. On page 3, strike out lines 16, 17 and 18.

Mr. Wickersham — Mr. President, I ask for a rising vote on that.

The President — The question is upon the recommittal of the bill with instructions to amend as read by the Secretary and report forthwith. All in favor will rise and remain standing until counted. The gentlemen will be seated. All opposed to the motion will rise. The motion is evidently lost. The Secretary will read the next motion.

The Secretary — By Mr. Cobb. On page 1, line 5, before the word "or" at the end of the line insert the words "the improved barge canal." On line 6, before the word "canal" insert the word "any." On page 2, after the bracket on line 12, strike out the balance of the page. On page 3, strike out all italicized matter through to line 15 and insert the following: "The foregoing prohibition shall not apply to such portions of the existing canals as by reason of changes made pursuant to laws heretofore enacted for the improvement of the canals of the state shall no longer be required for canal purposes, but no sale, lease or other disposition thereof shall be made until they shall have been abandoned by general laws enacted pursuant to the recommendation of the canal board. Any such sale, lease or other disposition shall be subject to the approval of the commissioners of the land office and secure to the state the fair value of the property affected."

Mr. Dunmore — Mr. President, I ask for a rising vote on that.

The President — All in favor of recommitting the bill with instructions to report forthwith, amended as read, will say Aye, contrary No. It is plainly lost. The Secretary will read the next motion.

The Secretary — By Mr. Cobb: On page 3, line 22, strike out all of the line after the word "only", all of line 23, and line 24 to and including the word "canal."

Mr. Cobb — Mr. President, I ask for a rising vote.

The President — All in favor of the motion will rise and remain standing until counted. The gentlemen will be seated. All opposed will rise. It is plainly lost. The gentlemen will be

seated. That concludes the amendments. The Secretary will read the text of the bill.

The Secretary — *The Delegates of the People of the State of New York, in Convention assembled, do propose as follows:* Section eight.

The President — The Secretary will call the roll. All in favor of the adoption of this Proposed Amendment will answer Aye as their names are called, and all opposed will answer No. The Secretary will call.

Those who voted in the affirmative were: Adams, Ahearn, Allen, F. C., Angell, Austin, Baldwin, Bannister, Barnes, Barrett, Baumes, Bayes, Beach, Bernstein, Berri, Bockes, Brackett, Brenner, Bunce, Burkan, Byrne, Clearwater, Clinton, Cobb, Coles, Cullinan, Dahm, Deyo, Doughty, Dow, Drummond, Dunlap, Dunmore, Dykman, Eggleston, Eisner, Endres, Eppig, Fancher, Fobes, Fogarty, Frank, Gladding, Green, Greff, Griffin, Haffen, Hale, Harawitz, Heaton, Hinman, Johnson, Jones, Landreth, Latson, Law, Leary, Leitner, Lennox, Lincoln, Linde, Lindsay, Low, McKean, McKinney, Mandeville, Martin, L. M., Marshall, Mathewson, Mealey, Meigs, Mereness, Mulry, Newburger, Nicoll, C., Nicoll, D., Nixon, Nye, Olcott, Ostrander, Owen, Parker, Parmenter, Pelletreau, Phillips, J. S., Phillips, S. K., Quigg, Reeves, Rhees, Rodenbeck, Ryan, Ryder, Sanders, Sargent, Saxe, J. G., Schoonhut, Schurman, Sharpe, Shipman, Smith, A. E., Smith, E. N., Smith, R. B., Stanchfield, Standart, Steinbrink, Stimson, Stowell, Tierney, Tuck, Unger, Vanderlyn, Van Ness, Wadsworth, Wafer, Wagner, Ward, Waterman, Webber, C. A., Weed, Westwood, Wheeler, Whipple, White, C. J., Williams, Wood, Young, C. H., Young, F. L., President.

Those who voted in the negative were: Aiken, Bell, Blauvelt, Dick, Leggett, O'Brian, J. L., Parsons, Potter, Sears, Wickersham.

When Mr. Cobb's name was called he said: I desire to explain my vote. It is absolutely necessary, or at least it is considered necessary that the State have a constitutional authority for disposing of the large amount of canal property that otherwise they would have to maintain in a useless condition. I cannot but deplore the fact that this provision so essential is coupled with what are in my judgment pieces of special legislation. Nevertheless, the good in the bill is perhaps greater than the evil which goes along with it, and I therefore withdraw my request to be excused from voting, and I vote Aye.

The President — One hundred and twenty-seven votes have been cast in the affirmative and ten in the negative. This Proposed Amendment having received the affirmative vote of the

majority of all the delegates elected to the Convention, it is adopted. The Secretary will read the title of the next order on the calendar.

The Secretary — No. 813, by the Committee on Governor and Other State Officers, repealing sections one, two, three, four, six and seven, of article V, and creating a new article V in relation to State officers.

The President — The amendment is open to debate under the rule.

Mr. Rhees — The purposes and the ideas of the Committee were so completely set forth in the debate during the three days under which this article was under discussion that the Committee does not desire at this time to present any direct argument. The Committee moves the adoption of the article as printed.

Mr. Latson — Mr. President, it may be remembered that the last word with reference to this matter was very late in the evening, something like two o'clock, and at that time I called the attention of the Committee of the Whole to certain provisions of this article which I think inadvertently touched the matter of our National Guard and naval militia. The language then submitted was not satisfactory to the Committee of the Whole. Since that time I have taken the matter up with the chairman and the members of the Committee on Governor and Other State Officers, and also with the chairman of the Committee on Revision, and the necessity for the introduction of a short paragraph seems apparent. I might direct your attention to the use of the word "civil" in line 14, of page 2, and in so doing would remark that it seems perfectly clear that the intention of this bill was not to include within its provisions the matters pertaining to military or naval affairs. If, however, you look at the language in line 4, on page 6, you will see that if that language were left just as it is, every court martial, every board of inquiry, every military commission, would fall within its term. So also with reference to the language found in line 10, of page 4. Under the language there used, the armory board would lose its entire function, and all of the armories, arsenals, camp grounds and so forth, would pass under the jurisdiction of the head of the department of public works.

Mr. Parsons — You have been reading from the old print.

Mr. Latson — I beg your pardon. The provision at the top of page 3, line 3, refers to the care, maintenance and operation of the State's public works, including all public buildings. That would include all of the armories and all of the camp grounds, and all of the rifle ranges, as well as the property of the naval militia, which seems not to have been the intention, and I refer

also to the provision with reference to the appointment of other commissions and that is found in the reprint on page 5, at line 25. The heads of all the departments and the members of all commissions, unless otherwise provided by this Constitution, shall be appointed by the Governor and may be removed by him in his discretion. Now, for the purpose of indicating the true intention of this article, I propose the following amendments, and ask that the bill be recommitted to the Committee of the Whole with instructions to amend by putting in this section and to report it forthwith as amended.

The President — The Secretary will read the amendment offered by Mr. Latson.

The Secretary — By Mr. Latson. At the end of page 6, add the following section: Section 23.

Mr. Latson — No, section 7.

The Secretary — Section 7. This article shall not apply to the military or naval affairs or forces, nor to property from time to time devoted to military or naval purposes.

Mr. Stimson — When this matter was up on Monday evening in the Committee of the Whole, it was brought to my attention by Mr. Latson, that it concerned the question of the military forces of the State, and I came to the conclusion at that time that the amendment was well founded, and I voted for it, but in the confusion and lateness of the hour I did not think the matter was fully understood by the members of the Committee of the Whole, and I rise now to say that the Committee has no objection to that, so far as I know, and it introduces no objection to Mr. Latson's amendment.

The President —All in favor of recommitting to the Committee of the Whole with instructions to amend as indicated will say Aye, contrary No. The motion to recommit is carried. Any further debate on the message? The debate is closed. The proposed amendment will lie over for reprint.

Mr. J. G. Saxe — I was informed at the opening of the session to-day that there was to be an extended debate on the question of civil service, and I was very much mortified to find that there had been a roll call on the Judiciary and Conservation articles in my absence, and I desire to state that if I had been present I should have voted Aye on the Conservation article and No on the Judiciary article.

The President — That notation will be made.

Mr. Dunlap — I would like to state, Mr. President, that I started for here on the early train this morning which is supposed to arrive in Albany at half-past eight, but I was delayed and did not get here until after the Conservation and the Judiciary and

the Home Rule bills had been voted on. Had I been here I would have voted for each of them. I would have voted in favor of each of them.

Mr. Green — Mr. President, may I explain that I was absent and it was impossible for me to get here in time for the roll call on the Conservation article, and if I had been here I would certainly have voted in favor of it.

The President — That notation will be made.

Mr. Rodenbeck — The Committee on Revision presents the following report:

The Secretary — Mr. Rodenbeck, from the Committee on Revision and Engrossment, to which was referred Proposed Amendment No. 858, Introductory No. 702, reports the same as examined, found correct, and properly engrossed.

The President — All in favor of agreeing to the report will say Aye, contrary No. The report is agreed to.

The Secretary — Mr. Rodenbeck, from the Committee on Revision and Engrossment, to which was referred Proposed Amendment No. 856, Introductory No. 706; also Proposed Amendment No. 854, Introductory No. 719; also Proposed Amendment No. 855, Introductory No. 715; also Proposed Amendment No. 853, Introductory No. 721, reports the same as examined, found correct, and properly engrossed.

The President — All in favor of agreeing to the report will say Aye, contrary No. The report is agreed to.

Mr. Rodenbeck — The Committee on Revision and Engrossment also reports amendments to two bills, which I think should be concurred in at this time so the bills may be printed and engrossed, so they can be placed upon the order of third reading.

The Secretary — Mr. Rodenbeck, from the Committee on Revision and Engrossment, to which was referred Proposed Constitutional Amendment introduced by the Committee on Legislative Powers, No. 859, Introductory No. 896, entitled "Proposed constitutional amendment. To amend generally article three of the constitution, following section nine, and to repeal sections twenty-three and twenty-five of such article," reports the same with the following recommendations: Page 1, strike out lines 1 to 5 inclusive. Page 2, strike out lines 1 to 5 inclusive. Page 2, line 6, strike out the section mark and insert the word "section". In the same line strike out the word "such" and insert after the word "article" the words "three of the constitution". Page 2, line 14, change the numeral "3" to "2". Page 3, line 3, change the numeral "4" to "3". Page 5, line 1, change the numeral "5" to "4". Page 5, line 8, change the numeral "6" to "5" Page 5, line 13, change the numeral

"7" to "6". Page 5, line 22, change the numeral "8" to "7".

Mr. Barnes — Mr. President, I move to concur in the report of the Committee on Revision.

The President — Those in favor of agreeing to the report of the Committee on Revision will say Aye, contrary No. The motion is agreed to.

The Secretary — Mr. Rodenbeck, from the Committee on Revision and Engrossment, to which was referred Proposed Amendment introduced by Mr. Franchot, No. 790, Introductory No. 131, to amend section 8, article V, of the Constitution, in order to permit the non-compulsory inspection and grading of food products, reports the same with the following recommendations: Page 1, line 3, strike out the section mark and insert the word "section". Page 1, line 6, after the word "law" insert an italicized colon and enclose with brackets the semicolon. Page 1, line 7, after the word "office" and before the ensuing bracket insert in italics "for the non-compulsory inspection and grading of food products or". Page 2, strike out the italicized matter in lines 1 and 2.

Mr. Franchot — Mr. President, I move to concur in the report of the Committee on Revision and Engrossment.

The President — All in favor of agreeing to the report of the Committee will say Aye, contary No. The report is agreed to.

Mr. Wickersham — I move that the order of third reading be suspended until the evening session.

The President — All in favor will say Aye, contrary No. The motion is agreed to.

Mr. Wickersham — Mr. President, I move we take a recess until 2:30.

The President — All in favor will say Aye, contrary No. The motion is agreed to, and the Convention stands in recess until 2:30 o'clock this afternoon.

Whereupon, at 1 p. m., the Convention took a recess until 2:30 p. m. of the same day.

AFTER RECESS — 2.30 P. M.

The President — The Convention will come to order.

Mr. Wickersham — Mr. President, I suggest the absence of a quorum and ask for the call of the roll.

The President — The Secretary will call the roll.

Upon the call of the roll the following delegates responded: Adams, Ahearn, Aiken, Allen, F. C., Allen, V. M., Angell,

Austin, Baldwin, Bannister, Barnes, Barrett, Baumes, Bayes, Beach, Bell, Berri, Bockes, Brackett, Brenner, Bunce, Byrne, Clearwater, Clinton, Cobb, Coles, Cullinan, Dahm, Daly, Dennis, Deyo, Dick, Donnelly, Dooling, Doughty, Dow, Dunlap, Dunmore, Dykman, Eggleston, Eisner, Fancher, Fobes, Fogarty, Franchot, Frank, Griffin, Haffen, Hale, Harawitz, Hinman, Johnson, Jones, Kirby, Landreth, Latson, Law, Leary, Leggett, Leitner, Lennox, Lincoln, Linde, Lindsay, Low, McKean, Marshall, Martin, F., Martin, L. M., Mathewson, Meigs, Mereness, Newburger, Nicoll, C., Nicoll, D., Nixon, Nye, O'Brian, J. L., O'Brien, M. J., O'Connor, Olcott, Ostrander, Owen, Parker, Parmenter, Parsons, Pelletreau, Phillips, S. K., Potter, Quigg, Reeves, Rhees, Rosch, Ryder, Sanders, Sargent, Saxe, J. G., Schoonhut, Schurman, Sears, Sharpe, Sheehan, Shipman, Slevin, Smith, A. E., Smith, E. N., Smith, R. B., Stanchfield, Standart, Steinbrink, Stimson, Stowell, Tierney, Tuck, Unger, Van Ness, Wadsworth, Wafer, Wagner, Ward, Waterman, Weed, Westwood, Wheeler, White, C. J., Wickersham, Wiggins, Wood, Young, C. H., Young, F. L., President.

The President — 125 delegates have answered to their names. A quorum is present.

Mr. Latson — Mr. President, I ask unanimous consent to submit out of order a final report of the Committee on Militia and Military Affairs.

The Secretary — Mr. Latson from the Committee on Militia and Military Affairs submits the following report.

The President — The report will be printed under the rule. The Convention will now go into Committee of the Whole for consideration of the special orders of the day. Will Mr. Sears take the chair? (Mr. Sears takes the Chair.)

The Chairman — The Convention is now in Committee of the Whole. The Secretary will read the first number.

The Secretary — No. 419, General Order No. 37, by Mr. Parsons. To amend Article 3 of the Constitution in regard to the power of the Legislature to prohibit manufacturing in structures used for dwelling purposes.

Mr. Parsons — Mr. Chairman, I offer the following amendment:

The Secretary — To amend General Order No. 37, by substituting the following for the words in italics in lines 4 to 7: "The Legislature shall have the power to regulate or prohibit manufacturing in tenement houses."

Mr. Parsons — Mr. Chairman, I ask to have the title amended in the same way. I would like that added to my motion.

The Chairman — Would you like to have the Secretary read the title?

Mr. Parsons — No. I wish to have my motion include an amendment of the title. Mr. Chairman, if the amendment which I have offered prevails then this amendment will read as follows: "The Legislature shall have the power to regulate or prohibit manufacturing in tenement houses." It is desirable to insert in the Constitution some such provision as this in order to overcome the Jacobs case, cited by the Court of Appeals some years ago, where the Court of Appeals held that it was unconstitutional for the Legislature to pass a bill to prohibit manufacturing of cigars in tenement houses. And the result of that decision has been to raise a doubt as to the power of the Legislature to deal with sweat shops. For some years the matter was dealt with through the tenement house law by requiring tenement houses where manufacturing was to take place to obtain licenses. That, however, proved ineffectual as amply appeared in the investigations made by the State Factory Investigation Commission, which was appointed after the Triangle Shirt Waist factory fire; and in 1913, the Legislature passed a law absolutely prohibiting the manufacturing of some kinds in tenement houses. It is now part of Section 124 of the Labor Law, and reads: "No article of food, no dolls or dolls' clothing, and no article of children's or infants' wearing apparel shall be manufactured" and so on, "in a tenement house". In some of the decisions in the Court of Appeals since the Jacobs case, it is hoped that if the question should again come before the Court of Appeals, it would practically overrule its decision in the Jacobs case and hold this legislation constitutional, but it is not certain, and, therefore, we who believe in this legislation, if we look forward, we see that other legislation along that line may be necessary. Then, we must utilize the opportunity which we have here to make, or to put it in the power of the Legislature, beyond a doubt to pass this sort of legislation. Now, as it is in a way to correct something which the courts have done in interpreting the police power and the due process clause, it comes down to details and the discussion will, I presume, be concerned somewhat with the need of such legislation. This is mainly a New York city problem. There are some thirteen thousand tenement houses in New York licensed for manufacture. Each one of these tenement houses have many families. Now, we have laws about sanitation, about hours of labor, about the labor of women and children, and it is practically impossible to enforce those laws in tenement houses and why? Because, when the inspector from the department comes in on the ground floor

a wireless message goes through the house and those who are violating the law cease work for the time, and it, therefore, appears to the inspector, when he goes through the house that the law is not being violated and the only discoveries which are made of violations of the law, and they are numberless, are made by people who do not come from the Department of Labor. Fortunately, this commission sent its workers in and they were able to say that they did not come from the Department of Labor, which was technically true, and so they got the facts. Now, others will discuss these points more fully. I wish to just point out a few things in connection with it. In the first place, the figures show that it leads to the employment of children, and very little children. Now, take just one set of statistics on the subject of picking nuts, which is done in tenement houses under most filthy conditions, sometimes in rooms where there is disease. That is one of the things which has been corrected by the legislature of 1913, but the constitutionality of which may be in some doubt. For instance, the inspectors visited 41 families. Nine families had no children, 32 families had 91 children between the ages of 3 and 16, and out of those 91 children, 76 were at work, and that was exceeded in a number of other cases. So much for the children. It is unfair to the enlightened manufacturer to be compelled to compete with the manufacturer who contracts out this work to sweatshop workers, because the enlightened manufacturer who has all the manufacturing done in his factory has to observe all the labor laws, all the health laws, and that means greater expense; whereas, the manufacturer who contracts it out gets the work done for him under conditions where those laws are not complied with.

Mr. Cullinan — Do I understand your language to be that the Legislature may regulate or prohibit the manufacturing in tenement houses?

Mr. Parsons — I am offering an amendment, Mr. Cullinan. I will send it over to you. The amendment provides for it. I am arguing for the amendment.

Mr. Cullinan — Well, do you use the word "regulate or prohibit"?

Mr. Parsons — Yes.

Mr. Cullinan — Well, the Court of Appeals has held in the liquor tax cases that authorizing the regulation would permit prohibition. It would seem that these words "or prohibit" would be surplusage.

Mr. Parsons — Well, it was held in the Jacobs case that you cannot prohibit, and that is what we are trying to meet. Now, I want to read two bits of testimony about what happens. Dr.

Daniels, who is in charge of the outdoor work in the New York Infirmary for Women and Children, testified that she found in 1912 as follows: "I have found during this past year 182 families, 79 with contagious diseases, doing this tenement-house work. One family was embroidering monograms and three of the children were sick with measles. The woman was embroidering monograms on table napkins. I found 16 cases of scarlet fever during the entire time. Where they had the scarlet fever most of the people were finishing men's clothing; that is, doing all the hand sewing that is done on men's coats and trousers. The children had scarlet fever. The work was being done in the same room where they were sick, and during the convalescence of the child, by the child, sometime while the child was peeling. The law requires us to report every one of the cases * * * the notice of the board of health of a contagious disease was on the door while the work was going on." (You see how little advantage it is merely to have the power of the board of health to place its sign there, and you cannot have enough inspectors to prohibit it with 13,000 tenement houses.) "I found two cases of poliomyelitis, an infectious paralytic disease of children. The exact nature of how that is carried is not known. It is contagious from child to child." (I am informed that it is particularly prevalent amongst Italian children, and the Italians are largely engaged in this tenement-house work.) "It is a very horrible disease. I know one case where the child died, and the woman hardly stopped her work while the child was dying." Dr. Knopf, professor of diseases of the lungs at the New York Post Graduate Medical School, says this with regard to tuberculosis: "The work in the tenements by adults, as well as by children, I hold largely responsible for the great morbidity and mortality of tuberculosis in this city. The bad ventilation of the tenement house, added to the inhalation of dust by the workers, and the frequency of tuberculosis among them causes the fearful condition which we are now trying to combat. I firmly believe that if we could do away with this one source of propagation of tuberculosis we would reduce the mortality and morbidity very greatly. In the Gouverneur Hospital Dispensary for Tuberculars, we have made very careful tabulations and found that 37 per cent. of all the tuberculars who applied there for relief were garment workers. It is among the workers in this trade that tuberculosis is most prevalent. We will never be able to eradicate this disease from our midst unless we take energetic steps and stop work at home."

Mr. Buxbaum — Will not the same people work in factories who work in tenement houses and will your Proposed Amendment do away with all these diseases among the poor in New York city?

Mr. Parsons — Mr. Buxbaum, when they work in factories the health laws and the labor laws can be enforced, and the conditions are sanitary, but when they work in tenement houses it is impossible to enforce the law. It is to make possible such legislation that this provision is offered.

Mr. Leggett — May I ask a question? Mr. Parsons, what do you mean by a tenement house?

Mr. Parsons — I am very glad you asked that question. A tenement house is "any house or building or portion thereof occupied as the house, home or residence of three families or more living independently of each other and doing their cooking upon the premises."

Mr. Leggett — That is the statutory definition?

Mr. Parsons — That is the statutory definition both in the Labor Law and the Tenement House Law.

Mr. Leggett — Under your Proposed Amendment, do you think it would be possible for the Legislature to change that definition and still have this amendment apply?

Mr. Parsons — Change it how?

Mr. Leggett — So that it will mean something else than what it does now, and still have this amendment apply to the change in definitions?

Mr. Parsons — I do not think they could change it so as to have it mean anything substantially different from the definition I have read.

Mr. Leggett — For instance, suppose that the Legislature should change this definition and make it two families instead of three, would your amendment then apply to such a situation as that?

Mr. Parsons — I do not know whether it would; I am not sure. It would not apply if it were changed to one instead of three, certainly.

Mr. Leggett — You are sure of that?

Mr. Parsons — Certainly.

Mr. Leggett — Why?

Mr. Parsons — Well, that is a question of degree.

Mr. D. Nicoll — Would this amendment permit the Legislature to pass laws prohibiting a lady from manufacturing dresses or artificial flowers in a flat on Lexington avenue?

Mr. Parsons — Yes, I think it might.

Mr. D. Nicoll — It would?

Mr. Barnes — I think that if there are any doubts about this amendment, I can clear them up by reference to Section 19 of Article I, relating to workmen's compensation: "Nothing contained in this Constitution shall be construed to limit the power

of the Legislature to enact laws for the protection of the lives, health or safety of employees".

Mr. Parsons — I supposed you would refer to that. The difficulty with that provision is that it does not cover this case.

Mr. Barnes — That is what I was trying to show.

Mr. Parsons — These workers are not employees.

Mr. Barnes — That is just the point I was trying to make, that, as far as the employees are concerned, the Constitution itself now looks after them, but this strikes out the employer or the individual worker himself. I should like to read from the decision in the Jacobs case which Mr. Parsons desires to destroy by constitutional action: "What does this act attempt to do?" says Judge Earl. "In form, it makes it a crime for a cigarmaker in New York and Brooklyn, the only cities in the State having a population exceeding 500,000, to carry on a perfectly lawful trade in his own home. Whether he owns a tenement house or has hired a room therein for the purpose of prosecuting his trade, he cannot manufacture therein his own tobacco into cigars for his own use, or for sale." That is the decision that we are asked to strike out by constitutional enactment. "So, too, one may be deprived of his liberty and his constitutional rights thereto violated without the actual imprisonment or restraint of his person. Liberty, in its broad sense, as understood in this country, means the right, not only of freedom from actual servitude, imprisonment or restraint, but the right of one to use his faculties in all lawful ways to live and work where he will, to earn his livelihood in any lawful calling, and to pursue any lawful trade or vocation." Is this Convention against that decision, against that language? Do we wish to repeal it? This is an abridgment of the fundamental individual right of a man to earn his own living in his own way, and I think, not touching at all the point of all whom he may employ, that covers the situation in Mr. Parsons' statement.

Mr. Unger — The fault with Mr. Barnes' application of the Jacobs case is that he does not understand precisely the reason for the enactment of the law which the Jacobs case declared unconstitutional. While the law in effect, as Judge Earl did say, operated to prevent a cigarmaker from manufacturing cigars in a tenement house, its prime purpose was to prevent the breeding of disease in tenement houses and the manufacture of cigars in those tenement houses which were contaminated with disease. The Jacobs case has been the greatest barrier to social welfare in the history of this country.

Mr. Chairman, the bill that our Committee presents is one of

the real reasons for the convening of this body. We were not called together by an overwhelming vote; we were not called together for the purpose of devising new systems of political patronage. There were great social wrongs that needed righting. The wave of industrial progress had been surging against and wearing away the rock of special privilege. This is one of the times we can all get together and do something which will go a long ways towards lifting the burden upon those who are less fit to bear it. I sincerely hope that the amendment which our Committee has so carefully considered, so thoughtfully labored over and to which we have devoted our best efforts unselfishly, and unstintingly, will prevail.

Mr. Leggett — I was a member of the Committee on Industrial Relations, and the words of the gentleman who has just sat down sound a little curious, where he refers to the care with which we considered this amendment, when you take notice that the amendment now offered by Mr. Parsons, and to which he says he is devoting his remarks, is entirely different from the one that the Committee reported. I want to call your attention to what the Committee did report. Let us read it. It is short: "Nothing contained in this Constitution shall limit the power of the Legislature to enact laws prohibiting in whole or in part manufacturing of any kind in structures any portion of which is used for dwelling purposes." Was there ever anything more sweeping than that? Just consider the parties who might be affected by that. A woman having a small family, perhaps, engaged in dressmaking and all the arts of making women's apparel and men's apparel — how many of them are scattered through the State of New York? I doubt if this Committee had their eyes directed toward any part of the State except the city of New York. How many men are there in the State of New York who run a shoe-making, boot-making shop, and live in the same building? Up in my country practically every cheese factory contains a part of it set apart for the dwelling of the man who makes the cheese. Why, I could spend all my time enumerating the people who lived in the same place where they conduct some sort of manufacture. Every farmer's wife makes butter in her own house. Are you going to make it possible for the Legislature to bar things of that sort? They say it is not possible. I don't know about that. Have you got that amount of confidence in the Legislature? Just to-day you would not give discretion to your Legislature to sell a piece of land; you tied it up in the Constitution. And yet you ask to permit your Legislature to have the discretion to bar men from manufacturing in their own homes.

Mr. Wagner — The cheese factory to which you have just alluded would not be affected by this provision of the Constitution, would it, where the owner simply lives upstairs?

Mr. Leggett — Why not?

Mr. Wagner — Well, the tenement-house law defines what a tenement-house is.

Mr. Leggett — That is not the proposition here. That is only an offered amendment. Now, right on that point: I just asked the gentleman whether the Legislature would be competent to modify the definition of a tenement-house and still have this constitutional amendment apply to it? He said he thought they could. I asked him, for instance, suppose they should modify it to the extent of saying the tenement-house should be one occupied by two families instead of three families. He said he didn't know; he didn't believe they could modify it so that it could be only occupied by one. Are you going to put that trust in your Legislature? Are you going to take that uncertainty?

Mr. Wagner — Wouldn't the court take into consideration what the statutory definition of a tenement-house was at the time of the enactment of a constitutional provision?

Mr. Leggett — That is the question in substance that I put to Mr. Parsons, and he refused to commit himself on it.

Mr. Parsons — I rise to a question of personal privilege, Mr. Chairman.

The Chairman — Does Mr. Leggett yield?

Mr. Leggett — I don't know. I think I have yielded enough.

Mr. Parsons — Mr. Chairman, I rise to a question of personal privilege.

The Chairman — State the question of personal privilege.

Mr. Parsons — That Mr. Leggett has not the right to misstate what I said, which was that the Legislature would not have the right to legislate changing the definition substantially from that which it is in the law now.

Mr. Leggett — When I asked Mr. Parsons if they would have the right to reduce the number of families to two, and still have this apply, if I am not mistaken, he said he didn't know.

Mr. Parsons — I said I was not certain about that, but I was certain about it being reduced to one family.

Mr. Leggett — Correct, at last. Now I put it to this Convention; do you want to adopt such an amendment as that and put it in the power of the Legislature to bar a man because, forsooth, he may rent the upstairs of his house to somebody else, that he cannot manufacture, earn his own living, in his own house, by the labor of his own hands? I wonder if the Convention wants to go that far.

Mr. Dunmore — Mr. Chairman, I think the great trouble about the conflict in regard to social reform comes from the fact that people living in New York city, in order to meet evils existing there, want to have laws passed which would create a great loss and a great inconvenience throughout the rest of the State. Now, let us see how this amendment would apply to certain people that I know of in my own city. We have hundreds of people in the city, widows with daughters; men earning a salary, but where the wife and daughters are helping them out, who take in what is called ready-made clothing to make up. It is cut out in the factory, taken to the houses of these poor people and the wives and daughters of working men make up the clothing. Now these daughters work in making this clothing by the side of their own mother, and under conditions which are far better than would exist for those daughters if they were driven out of the homes and into the factories. This amendment would prohibit these poor people from piecing out the earnings of a workingman to support the family, or to pay for the home, or to lay aside money to take care of the couple in their old age. Now, there is no reason for that sort of thing in the smaller cities, or in the country. I don't know what the conditions may be in New York city, but I say, if the conditions are such that they must be corrected there, then the amendment should be in such form as not to extend beyond that. I certainly hope that this amendment will not prevail.

Mr. A. E. Smith — I just want to answer one or two suggestions which have just been made. I think that the history of the operation of the Legislature, or the dealing of the Legislature with this question of tenement manufacturers has been long recognized as being along wise and sane lines, and that there can be nothing to the contention of my friend, Mr. Leggett. If, however, this Convention believes that at any time in the future the Legislature would be so stupid in its handling of this question as to provide that a man could not make cheese up in his house on the farm, why then they had better not put this into the Constitution, but I don't think you can get many men to follow Mr. Leggett's idea along that line. All legislation on this question is after investigation; it is with a knowledge of the facts. No man would come to Albany and put a bill in the box prohibiting manufacturing in tenements right away. You could not pass any such bill as that. I would be the last man in this Convention to vote for any such bill as that. But what we want to do is to leave the power with the Legislature for the proper regulation of something that it has been doing right up to the session before the last. Now, my friend Judge Dunmore refers to it as social reform. It is not social reform.

That is not the theory which is behind legislation which regulates manufacturing in tenement houses. It is for the welfare and the benefit of all the people of the State and the health of the community, as I will show in a very few moments. Now, Mr. Barnes, of course, quotes a decision with which none of us disagree, but sometimes it is more interesting to know the facts that led up to the decision than it is to read the decision, and it is more interesting to find out whether it could apply to an entirely different set of circumstances. The facts that were presented to the court, to just take a second of your time, in the Jacobs cigar case as they appeared before the police justice were these: The relator at the time of his arrest lived with his wife and two children in a tenement house in New York city, in which three other families also lived. There were four floors in the house and seven rooms on each floor, and each floor was occupied by one of the families living independently of the other, who did their cooking in one of the rooms so occupied. The relator at the time of his arrest was engaged in one of his rooms in preparing tobacco for making cigars, but there was no smell of tobacco in any part of the house except the room where he was thus engaged. So that the evident intent of the statute held unconstitutional here was for the protection of the health of the other occupants of the house, and the facts are such as to establish that there was no occasion for such a statute in this particular case, and the gentleman from Albany would not hold that that would be true in the light of the facts about tenement manufacturing that were disclosed in the recent investigation. The State has undertaken the regulation of tenement manufacturing. That is not new. That has been in the Labor Law for some time. Section 100 of the Labor Law provides for the licensing of tenement houses in which there is altering, repairing or manufacturing of articles of any kind. But, as the Congressman told you, because of the great number of tenement houses, because of the great number of apartments into which all of these tenement houses are divided, a proper regulation of it by the State is nearly impossible. The corps of inspectors that would be required would be more than that activity on the part of the State would warrant.

There has never been any question of any legislation under the police power, where it could be shown that the regulation was for the health of all the people of the State. For instance, we provided by law some time ago that certain articles of clothing were not to be manufactured in tenement houses and we excepted from that articles that had to be laundered before they were worn, consequently showing that the Legislature some time ago, before the days of the Factory Investigating Committee, had in mind the care and the protection of the general health of the people of the State

in dealing with this question of tenement-made goods, so that germs of disease might not be carried from the tenement in clothing and stuff there manufactured, and anything that was laundered was exempted from it. Now, as a result of our investigation, we undertook to amend the Labor Law, and it is contained in Section 104, and I believe that it comes dangerously close to the reasoning in the Jacobs case, but the Court of Appeals in its recent decisions in all such laws has taken into consideration all the facts. Judge Hiscock in his opinion in the night-work case distinctly said that the opinion of the court was influenced by the evidence that was produced to show the public necessity for some of these rather drastic regulations. Now, we provided in 1913 that no article of food, no dolls, or dolls' clothing, no clothing, no children's or infants' wearing apparel shall be manufactured, altered, repaired or finished, in whole or in part, and so forth, in a tenement factory. The conditions that brought that about — the evidence concerning conditions in tenement-house factories that brought that about was this: It prohibited the manufacturing of articles which were not subject to laundering after manufacturing, but went directly from the tenement to the sales store to be sold to the first purchaser; and the evidence showed and clearly showed that these dolls' clothing were manufactured in small tenement-house rooms where there was one child lying on the bed with scarlet fever, where that article was being manufactured right in the midst of it, and the prevalence of tuberculosis among tenement workers was manifest in hundreds and hundreds of cases. It was not the exception. In fact, sickness among the workers seemed to be a general thing, sickness of some form or another. That may not be held under the due process of law clause to be a proper exercise of the police power, but nevertheless the Legislature has taken a chance. They went a step farther in that and they said no articles of food were to be manufactured in a tenement house. The reason for that was, that the inspectors in one factory investigating committee and the social workers of the Sage Foundation found sick people and diseased people handling the food stuffs in tenements, packing them in glass jars, which had become a popular way of selling food. Let me read one little passage from the report of the committee. Several families were found picking nuts in a large tenement in New York city, taking the meat out of the nut and putting it in glass jars and screwing the cap on them, ready for sale. The whole building is in an extremely dilapidated condition. The halls and stairs are absolutely dark and unusually wet. Of three rooms in an apartment, two rooms were without any outside light, and were in a filthy condition. The plaster was off the walls and ceilings in patches, and the woodwork and the floors did not look

as though they had been cleaned or painted in years. In one of them lived a family of six, and the mother picked nuts. In another a mother of eight children was found picking nuts, and every now and then she would crack one of the nuts with her teeth.

The Chairman — The gentleman's time has expired.

Mr. A. E. Smith — May I close in a word. I do not like to be shut off this way.

The Chairman — The gentleman may close in a sentence or two.

Mr. A. E. Smith — Now, that clearly indicates that the Legislature has the power in all cases of necessity, to prohibit manufacturing in tenement houses, where the conditions are such that nobody will stand for it. There is some good wholesome manufacturing that goes on in some of the homes of the poor families, where the father of the household is probably sick or incapacitated, but the Legislature should unquestionably have the power to regulate it, and if the regulation is to go to the extent of prohibiting certain articles to be manufactured, the Legislature should have the power because it has wisely and discreetly used it in the past.

Mr. Clearwater — It is rarely, Mr. Chairman, that I find myself in accord with my distinguished friend Mr. Parsons, and my still more distinguished friend, the next sheriff of the county of New York, and it affords me the greatest pleasure to endorse what they have said upon this very important question. The amendment which is under discussion is not the printed amendment commented upon by my neighbor, Mr. Leggett, but on the substitute offered by Mr. Parsons, which is as follows: "The Legislature shall have the power to regulate or prohibit manufacturing in tenement houses". Now, the apprehensions of Mr. Leggett and Judge Dunmore are absolutely baseless. As has very well been pointed out by Mr. Smith, the Legislature is not composed and never will be composed entirely of fools. No Legislature will undertake to prohibit the manufacture of butter or cheese in Allegany county by two families living in the same house, nor would it enact any similar fool legislation for any part of the State. This question is far broader than the mere question of manufacturing. It is one of the principal questions of the humanities. An investigation was made by the State Charities Aid Association, of which Mr. Joseph H. Choate is president, of which the President of this Convention is a trustee, and of which many members of this Convention are members; and this is what they discovered in the matter of tenement house manufacturers in the city of New York: Undergarments of infants, toys for children to play with, dolls' clothes laid out on a bed in which a child sick with the scarlet fever was lying; children's garments

in process of making used to cover tuberculosis patients; nuts, cracked with the teeth and picked with the fingers, piled on dirty tables; cigarette papers licked with the tongue by persons suffering from those diseases which originated in the Orient and which readily can be imagined without being named. Feathers curled by women who had just been changing the swaddling clothes of an infant suffering with dysentery and then proceeded with her work without washing her hands; very many articles of a similar character, made under similar conditions in these tenement houses. Therefore, the State Charities Aid Association recommended to the Factory Commission and the Factory Commission to the Legislature the passage of an act which the Court of Appeals held to be unconstitutional in the Jacobs case. Surely in the interest of the public health, and in the interest of the poor men and the poor women who seek to make a living in their own homes, the Legislature should have the right to regulate working in crowded tenements and to prohibit it under insanitary conditions, and that is all the Proposed Amendment either permits or provides for. It is, of course, a condition which largely exists in the great cities of the State, but the articles made under the unsanitary conditions disclosed by this investigation go all over the entire State, into the most remote rural districts, and they carry with them the insidious seeds of disease and disease which manifests itself and which often it is utterly impossible to trace to its source. In fact, sir, a recent epidemic of typhoid fever in the county in which I live, in which 137 persons were stricken with typhoid fever and 11 died, so far as it was possible to trace the origin of the outbreak, came from precisely this source, to wit: clothing made in a tenement house, underwear made in a tenement house where they made the lingerie for young women. So far as our local physicians and our boards of health could trace this outbreak of typhoid fever, it came from clothing made in such a place. Of course, sir, it will be seen that this is not a denial of a right. It is the regulation of a right, and the regulation of a right in the interest of public health, and as Mr. Smith very tersely said, no Legislature will undertake, or dare to undertake, to interfere with the honest, hard-working farmers of Allegany or of Cattaraugus or of Erie.

Mr. Parmenter — Mr. Chairman, not being a lawyer, I can look at this only from a social point of view, and it seems to me there are two aspects that concern us; the one, the family, and the other, the public. From the point of view of the family, I want to say just this. We talk a great deal about the conservation of our national resources and I do want to call to the attention of this Convention that the natural resource of the human being is perhaps the most important of any that we should seek to conserve

in this State. Now, how it will be done is for lawyers to decide, but this fact remains, that not only in the great big cities, but in some of the smaller ones, there exist conditions which are very, very prejudicial to the health of the future mothers and of the growing children; children who, from their long hours of labor, from lack of play, from lack of sunshine, are not growing up to be healthy, sturdy children, and delevop into future men and women of that type of strength which will be an asset to the State. And, as a matter of fact, I think we may state without perhaps being in any way called to account for the statement, that it is only through healthy families that a State can progress, and when the families cease to be healthy, the State begins to die, and history has so shown it from the very beginning. Now, the next question is the question of the public. Every word which Judge Clearwater has said, and Mr. Smith and Mr. Parsons, I believe that every doctor in practice in the large cities can corroborate and many times add to. I want to give just one instance which called my attention to this question a great many years ago. I was asked to go to see a particularly loathsome case of cancer with another physician. We arrived at the place; we found rather slovenly quarters; we found the patient lying upon a not too thick cotton mattress, through which the discharges from the patient had penetrated, and in the bottom of that mattress dozens of bananas were being ripened by the heat of the body of the patient. Now, I doubt if the Court of Appeals or anybody else would want to eat those bananas. Do you want them in your family? And not only are foods, but articles of clothing produced under conditions where infection can be carried from that locus all over the community, then into the State, because no effort is made at all towards sterilization or proper preparation for the receipt of these clothes by the public, and whether it is legal or whether it is not legal, according to the decisions of the courts, the solitary fact remains that the public has some right for protection, even if injustice may come to the workers. Now, it is said that this kind of legislation will cause hardships. I presume it will. I presume it is a fact that the State has got to meet it perhaps through its charities; for one thing is positively certain and that is this: that people should not be allowed to work and live under conditions which not only kill them, but will kill others as well.

Mr. Wagner — Mr. Chairman, I want only to take a minute or two, because anything that is said now, of course, is cumulative. The presentation made by Dr. Parmenter just now, I think, should convince every one of us of the necessity of leaving the

power with the Legislature to deal with conditions in tenement houses in case there is a public demand. If all of the members of this Convention had had the opportunity to serve upon the Factory Commission on which Speaker Smith and myself had the advantage and pleasure of serving, there would not be a moment's debate before this power would be given to the Legislature to deal with this very serious problem. Mr. Parsons and Mr. Smith gave you instances which came to our knowledge as the result of the investigation, so I need not go over them except to say to you that there were some other cases coming to our knowledge which were too revolting even to put into the report; but it would bring home to your mind the danger that the public is constantly in from this tenement house work unregulated; I mean the danger of the spread of contagious — of the most serious of our diseases. Now, Mr. Barnes spoke of the Jacobs case. My own opinion is that if the question of regulating and even prohibiting the manufacture of different articles in tenement houses came to the Court of Appeals now, the right of the Legislature to regulate would be sustained. We passed legislation in the face of the Williams case prohibiting the night work of women in factories, and the Court, in order to distinguish the modern — the decision written by Judge Hiscock from the old Williams case, simply said they had the advantage of having facts before them that were not before them in the Williams case, and therefore with those facts as a basis, they were convinced that the police power was properly exercised, and that the laws were necessary for the protection of the people. But even in the Jacobs case we have the modern view of a judge who afterwards became Mayor of New York, in which he gave his opinion of the decision in the Jacobs case before students in Yale University in 1913. It is only short, and quite interesting, and I would like to read a portion of the address. He was speaking of the misconstruction, if I may use that term, of the courts of the word "limiting" in connection particularly with legislation involving the industrial and social justice of our people, and he said: "The first case I shall call your attention to is known in my own State as the tenement house tobacco case. There are similar decisions in other States, but I shall cite from my own State mostly in order not to be offensive. I will start with the tenement house tobacco case. You know what a condensed population we have in a part of the city of New York. Well, benevolent men and women in going around there found in the little rooms in these crowded tenements certain things being manufactured that were not wholesome. They found tobacco being manufactured into its various products in the living rooms of these poor tenements. Benevolent people who help the poor saw

it and the evils of it. They saw little children born into this world and brought up in bedrooms and kitchens in the fumes and odors of tobacco. They also saw longer hours of work than would be the case if workmen left their work at the shop and went home. So they went to the Legislature and got a law passed forbidding the manufacture of tobacco in the living rooms of these tenements. And the Governor signed it. Well, they thought they had accomplished something important. And a great many thought so, and a great many more to-day think so than thought so then. But it got into the courts and finally the highest court in my State, the Court of Appeals, decided the case. And it said that that statute was unconstitutional and void because it deprived the leaseholder, the tenant, of his 'liberty' and his 'property' within the meaning of this constitutional provision. It is one of the pioneer cases, and the judges who wrote the opinion waxed eloquent over this thing." Then he goes on to discuss that the word "liberty" never had any such meaning as that in the English cases, even to modern times.

Mr. Meigs — Admitting that conditions described as existing in the cities must be cured, isn't it a fact that the provisions of the Home Rule Bill which has passed this Convention are broad enough, and if invoked, will permit the authorities of the cities to correct these conditions?

Mr. Wagner — I have very grave doubts, Mr. Meigs, whether that is possible because the regulation of health is a State function, and I think, if in any particular locality the attempt to regulate the condition under which tenement house work is be done, the hours of employment say, the ages of the children to be employed, and work of that character — I think the court would say that no locality had that power. It would be in contravention of the Constitution, as being a State function, and the State would have to deal with that.

Mr. Meigs — Yes, but have we not proposed to give the cities greater powers than they now have, and therefore they can cure these conditions themselves?

Mr. Wagner — I don't think so. I don't think the municipality itself would be empowered. But, even if they were; if it were unconstitutional to regulate this question at all in tenement houses, how could our municipality do so any more than the State? What we are now attempting to do is to give the State the power to regulate and to prohibit this class of work, if it becomes a danger to the health of all the people. For, if you give it to the State, there would be no difficulty in the State delegating that power to the local authority, if they want. But what we want to do is to make

it within the Constitution, within the right of the State to regulate this tenement house work if it becomes an evil. So I hope, Mr. Chairman, that we will not hesitate, because the whole history of our legislation shows that the Legislatures have been most careful, have been concerned as well for the employer and the employee, and the people of the State, in passing legislation of that character; and I hope that we will see our way clear to remove this doubt as to whether the Legislature has the power to enact these laws.

The Chairman — The Chair wishes to call attention to the fact that only two or three minutes remain.

Mr. Marshall — I would like to have a few minutes longer, because this is a very important question and should not be discussed in a hurry. It involves great principles, and should not be disposed of, to use the phrase of Judge Clearwater, by the examples of sinister luridity. Not every person who dwells in a tenement house comes within the description of the people who have been referred to in this debate. The large majority of the dwellers in tenement houses are people of respectability, of cleanliness, of decency, of morality. The fact than an investigation committee, bent upon finding evils to remedy, and to make a public reputation, single out instances which are exceptional in character, and seek to legislate on the basis of them, is nothing for a Constitutional Convention to run away with, to lose its head about. We are confronted by a question of personal liberty. The powers of the State, by means of its authority, what is known as the police power to deal with evils that have been pointed out, are ample. The maintenance and preservation of public health is one of the well recognized grounds of legislative intervention, and there has been no difficulty in the past to regulate the tenement houses or any other structures in our cities or in the country, where public health has been affected by the manner in which they have been carried on, and their condition has improved from year to year, so that to-day the average tenement house is, from a sanitary standpoint, in a much better condition than many of the private houses of our cities. That is all legitimate legislation. Mr. Parsons, Judge Clearwater and Mr. Smith have called attention to example after example of legislation with regard to the preservation of the health of inhabitants of tenement houses which are directly within the police power of the State, and which nobody quarrels with, and which are ample in every way to deal with the evils as they are bound to exist, and which will tend to cure those evils. Why, then, is it necessary to write into the Constitution a provision

of this sort? Why have in the Constitution this character of special legislation, which is disfiguring this document? Why can't we deal with general principles, and allow them to be dealt with from time to time as the necessity arises? Senator Wagner says he has no doubt that the Legislature to-day can deal with this subject, and that from the experience of the last year, as the Court of Appeals, in the case of the Charles Swinburne Press Company, 214 New York, practically overruled the doctrine of the People against Williams, 189 New York, there is no doubt they will reach a different decision from what they did in the case of Jacobs, 90 New York. If that is so, why deal with the subject in the Constitution and I warn these gentlemen thus seeking special legislation that they are opening the door for grave mischief for the cause which they claim to represent, because when you come to interpret new laws which may hereafter be passed upon other subjects which claim to have relation to the public health, it will be pointed out that it was necessary to put into the Constitution an express provision with regard to tenement houses, even though it was not necessary, and that would be a precedent that would come home to roost in a manner which they do not desire. I consider this kind of legislation as evil in its effects, as unwise in its purpose, as is the provision which Judge Dunmore has sought to introduce here with regard to the definition of the police power and with respect to saying that acts under the police power must be reasonable. That is useless legislation; it is dangerous and perilous legislation, and this is no less so.

Let me call attention for a moment to what was decided in the Jacobs case. That was a case where the competitors of the men who were manufacturing in their own homes were seeking to drive them out of business. It was the large manufacturer who was trying to suppress the competition of the small manufacturer. I have before me a paper written by P. Tecumseh Sherman, a former State Commissioner of Labor, in 1912. Mr. Sherman is one of the ablest men who ever held that office in this State, a pure-minded man, one who had the welfare of the people at heart, one who knew the people, not from Fifth avenue, but from having lived right among them. He said: "As a matter of fact, the act was not designed to protect health but to put out of business one set of competitors in a trade war. * * * * So far, then, from having done harm in the way of sanitary reform, the decision in the Jacobs case has done good by giving the reform a proper direction and object. * * * * But the vast majority of tenement houses in New York are of the class better described as apartment houses, which are perfectly sanitary, and in such houses there is much home work of a good kind, such as fine sewing, art

work, etc., and under good conditions; and it would be a deplorable and unnecessary interference with liberty to forbid such work as an incident to the prevention of home work in insanitary slums." There is the statement of a fair-minded man, one who views the subject from close at hand. When you recollect that the Court of Appeals has recently decided that an apartment house is a tenement house; when, as a matter of fact, there is no definition in this provision as to what is a tenement house; and when the Legislature might to-morrow say that any man who lives in a house by himself and who carries on his business there or who carries on any kind of work there can be driven out of business, I tell you you are laying the foundation for great evils and you are interfering with the most precious possession of a man, his liberty of employment, his liberty of action, which is liberty, notwithstanding what Judge Gaynor may have said as to his conception of liberty.

The Chairman — The time for debate has expired. As I understand it, the Committee cannot lengthen the debate unless a motion is made to rise, report progress and ask leave to make some other rule. The question will have to occur upon the amendment.

Mr. Stimson — If nobody makes a point of order, may I not have three minutes to answer Mr. Marshall?

The Chairman — I will overlook the hands of the clock for three minutes.

Mr. Stimson — I simply wish to say this as to the part of Mr. Marshall's remarks which reflected on the accuracy of the Factory Investigating Commission in New York city. I happened to be in a position where I had some opportunity to verify the care and the ability and the accuracy which were shown by the commission headed by Senator Wagner, and a member of which was Mr. Smith. Five years ago when the city of New York was shocked by the Triangle fire, a committee of safety was formed which started the movement out of which that investigating committee was formed. I had the honor of being chairman of that committee. I can only say that I know of no commission that has made the careful examination and whose reports are so worthy of being made the foundation of careful legislation and action as is true of that commission. I wish to say further that I did not expect three months ago to find myself so soon an ardent defender of legislative power and discretion, but that is the position in which I find myself to-day and that is the position which this question reduces itself to. There is no question, Mr. Chairman, as to which the hands of the Legislature should be left so free as in dealing with the changing conditions of modern city life. In New York city, for example, the investigations to which I have

referred have shown that great portions of that city within the past five years have completely changed in character, and, from having great portions devoted to loft-buildings, have become manufactories, occupied by people of an entirely different class. New York is rapidly becoming a great manufacturing city, where manufactures are being carried on in a way hitherto unknown among most people. I simply say that in a matter like that the hands of the Legislature should be left free to deal with those conditions. The decisions which have been adverted to here, the Jacobs case, — the meaning which has been given to it in this very chamber shows the need of such a provision as this.

The Chairman — The time for debate has closed.

Mr. Dahm — I rise to a point of order.

The Chairman — The gentleman will state his point of order.

Mr. Dahm — The clock stopped immediately after Mr. Marshall sat down and when I desired to speak on this question the Chair saw fit to allow Mr. Stimson to speak.

The Chairman — The point of order is not well taken.

Mr. Wagner — I ask that Mr. Dahm have permission to speak a few minutes upon this question. He is very much interested in this subject, I know. I do not think any of us would object to his having the time.

The Chairman — Is there any objection to Mr. Dahm's speaking for a few moments?

Mr. Clearwater — I trust, if the gentleman speaks in opposition, that he will be permitted to speak.

Mr. Dahm — What I had to say, and what I desired to say, on the subject has already been said by the Chairman of the Committee and the various speakers. I am much surprised at the attitude taken by Brother Marshall, because, of all the men in this Convention, I believed him to be the one who would advocate the passage of such an amendment. Much has been said in this Convention regarding the welfare of the public but nothing has been said regarding the welfare of this class that we desire to protect. This class of workers, in the city of New York, particularly, is exploited by a class of employers who get a reward and receive work from this class of people that they could not otherwise get. They work, in fact and in truth, at starvation wages. They do not even make a living and in some instances they do not even get a bare existence. You gentlemen who come from the up-State districts know nothing at all of the great East Side. It has been referred to here as the "melting pot". You know nothing of our section in Brooklyn known as Brownsville. If you could only come there, if you could only see it, the want and the misery, the disease and the poverty caused by the wages they receive in

the sweat shops and in the tenement houses, there would not be any question as to what your decision would be here to-day. I sincerely hope that when this Convention votes it will be unanimous on the proposition offered by the Chairman of the Industrial Relations Committee.

The Chairman — The debate is now closed. The question occurs on the amendment offered by Mr. Parsons.

Mr. Barnes — May I offer an amendment? Is it too late for an amendment?

The Chairman — The Chair will receive the amendment. The Secretary will read the amendment of the gentleman from Albany so that the Committee may have the whole matter before it.

Mr. Barnes — A point of information. It is only in case of the adoption of the amendment offered by Mr. Parsons that this becomes operative.

The Secretary — By Mr. Barnes. On page 1, line 4, after the word "shall" insert "be construed to".

The Chairman — The question now occurs upon the amendment offered by Mr. Parsons. The Secretary will read the amendment.

The Secretary — By Mr. Parsons. In the title strike out all after the word "manufacturing" and insert in place thereof the words "in tenement houses". On page 1, lines 4, 5, 6 and 7, strike out the words in italics and insert the following: "The legislature shall have the power to regulate or prohibit manufacturing in tenement houses."

The Chairman — All in favor will rise. The gentlemen may be seated. All opposed will rise. The amendment is carried. The question now occurs upon the amendment of Mr. Barnes. The Secretary will read the amendment.

Mr. Wickersham — If I understand aright, Mr. Barnes' amendment was to the amendment originally offered.

Mr. Barnes — No, to Mr. Parsons' amendment, the way it is now.

Mr. Wickersham — Will the Secretary read the amendment?

The Chairman — The Secretary will read the amendment of Mr. Barnes.

The Secretary — After the word "shall" insert the words "be construed to".

Mr. Parsons — That does not make good English.

Mr. Coles — I think Mr. Barnes has misunderstood the amendment.

The Chairman — Mr. Barnes will correct his amendment.

Mr. Barnes — I withdraw it.

The Chairman — The question now occurs upon the proposed amendment as amended.

Mr. Dunlap — May we have the Clerk read the whole of it?

The Chairman — The Secretary will read the proposed amendment as amended.

The Secretary — Article three of the Constitution is hereby amended by inserting therein a new section to be appropriately numbered, reading as follows: The Legislature shall have the power to regulate or prohibit manufacturing in tenement houses.

The Chairman — All who are in favor of the amendment as amended will say Aye, contrary No. The Ayes seem to have it. The Ayes have it and the proposed amendment is carried.

The Secretary will read the next order.

The Secretary — No. 792, General Order No. 53, by the Committee on Industrial Interests and Relations.

Mr. Parsons — I offer the following amendment and I will ask to have it read.

The Secretary — By Mr. Parsons. Amend by striking out the brackets in lines 5, 7, 10 and 14, on page 2.

Mr. Parsons — Mr. Chairman, the object of that amendment is to take out certain brackets so as to leave in the language which is now in section 19 of article 1, the section which relates to workmen's compensation. With those brackets stricken out the proposition submitted by the Committee on Industrial Relations covers these two points: It changes the language of section 19, the latter part of it, for two purposes: one is to make what it considers somewhat better English and the other is to clear up language which was somewhat obscure, the language related to being considered to be a qualification of section 18, the preceding section, which was the section prohibiting the Legislature from limiting the amount of damages which could be awarded in case of death. It seemed simpler to modify the first section, section 18, in the way that we have done, which read thus: "Except in the cases provided for in the next section, the right of action now existing to recover damages for injuries resulting in death shall never be abrogated and the amount recoverable shall not be subject to any statutory limitations", so that the bracketed part in lines 18 to 21 is a corollary of that. The other language is merely, as we take it, improving the English. The other object of the amendment is to include in workmen's compensation the subject of compensation for occupational diseases of employment. There is some question, as to whether, under the present amendment, which amendment was made necessary by the decision in the Ives case, occupational diseases are included, and therefore, to make it perfectly clear, we have inserted the words "occupational diseases".

The Court of Appeals in the recent decision in the Jensen case, in which it was held that the present workmen's compensation law was not in violation of the provision of the Fourteenth Amendment, said that the theory of workmen's compensation was that injuries happen in industry and that it is better for the employers and employees, for the interests of the public, that a great, just and economic system of paying compensation to employees should be substituted. We know not only that accidents happen in industry but we know that in certain industries certain diseases come as the result of the occupation. The diseases depend somewhat upon the resistive power of the employee. Some would not be as subject as others. Of course, if the law is amended it would probably lead to more strict regulation on the part of employers in selecting their employees, so that they can avoid employing men who would be likely to acquire occupational diseases. There are a variety of these occupational diseases which I will not mention. While this is the committee amendment it embodies in it amendments submitted by Mr. Aiken, Senator Foley and Mr. Eisner and they will explain those diseases to you. But I call your attention to this fact, that occupational diseases in one line, the line of phosphorus match manufacturing, became so serious that a few years ago a Republican Congress of the United States, by the use of the taxing power, absolutely prohibited the manufacture of these matches. There are in the metal working trades and in under-ground, under-water work, caisson work, very well recognized occupational diseases, which on the average are practically certain to occur. The object of this amendment is to make it possible for the Legislature to include such of those as it shall select in the scheme for providing workmen's compensation, on the theory that they are unavoidable and that therefore the industry should bear the expense.

Mr. Aiken —At the time when the workmen's compensation law was passed the employers felt that it was unjust discrimination against them, but I think now they look upon it from a different viewpoint.

Mr. Parsons — I ask for order, so that we may hear.

The Chairman — Will the committee come to order. It is impossible for the Chair to hear and I presume it is impossible for the members of the committee to hear.

Mr. Aiken — They have found, that, so far as they are concerned, they simply have to pay a little more insurance. So far as the workmen are concerned, it is a just law; they receive every cent of the compensation that is awarded them, do not have to employ lawyers, and the employers find that it makes for the betterment of the workmen. Of course, prior to the adoption of the

compensation law, certain large corporations had adopted the principle. The International Harvester Company in this State had a system of compensation similar to the compensation law. Now that it has been adopted there are something like 180,000 employers in this State who have submitted themselves to the law and insured against accidents. This is a slight extension of the law. There is, so to speak, a twilight zone where it is difficult to say whether an injury comes from accident or disease. Take the case of a man who has to lift heavy weights; after a while the strain upon him produces heart disease; his heart pulsates for a while until some day after a little exertion he dies. Is that accident or the result of disease? Take the case also of hernia, where men who are subject to strain; take the case of the man who is handling ice, and in very severe weather he freezes his hands in the occupation; is that an accident or an element connected with his occupation? Or take the case of a man who in mowing the weeds along the right of way is poisoned with poison ivy and, it not being attended to, blood poisoning sets in and he dies. Is that a case of accident, or disease? These are not theoretical cases, but actual cases that have arisen under the Workmen's Compensation Law. Now, there are a large number of cases which cannot be said to be accidents but which do arise from the occupation itself, and they may be divided, perhaps, into two groups: Those that come from the environment, and those that come from the substance on which the employees are at work. Now, Mr. Parsons has alluded to the most general case, where the environment is the cause of the disease, the bends among men who dig our tunnels and where the compressed air forces the blood to the head and causes paralysis or death. Then the largest class of those workers who become diseased from the substance of the work, are those who work in lead and contract lead poisoning. There are something over one hundred different industries which have to do with lead — painters, powdermakers — over one hundred different industries, and lead poisoning every year causes a large number of cases of disease or death resulting in what is called lead colic or paralysis, and in some cases death. Now, it is to provide for these twilight cases, as I say, and from the cases which come from the occupation with which the employee is connected that this amendment deals. In the other countries, Germany commenced to deal with the subject in '92; England in 1900 added these diseases to the list of occupational diseases, now traced to twenty-four different diseases. Among the states, Ohio, which amended its Constitution two or three years ago, added occupational diseases. There are only a few states in which there is in the Constitution a provision with reference to workmen's compensation for disease, because the

great majority of the states have an optional system. Something over thirty states have, I think, adopted the workmen's compensation laws following the lead of New York. Now, this, it seems to me, is not a privilege that is granted to a workman, but the workman and the employer are engaged in a common enterprise. The workman gets his wages, and the employer gets his product, but the accidents or the diseases that come from that employment should be borne by both parties and that is a principle of the Workmen's Compensation Law. Of course, the employee has to bear the pain and suffering that goes with any accident or with any disease, and he has to bear a part of the loss of wages; but it is right, it seems to me, that the employer in this common enterprise should bear his share of the loss of wages, and that is the principle of the Workmen's Compensation Law, and it seems to me that it applies logically with more force to a disease which can be directly traced to an occupation in which a man is engaged than it can to accident, because a good many accidents happen which may not have a direct connection with the occupation; but in the case of an occupational disease there is always a direct connection between the disease and the employment. Now, there are some cases, some occupations which will use a man up in a very few years. Mr. Parsons referred to the phosporus, the making of phosphorus matches which was practically prohibited by Congress a few years ago, and we have what is called grinders' phthisis, men employed in grinding. Men employed in match work for four or five years, it will so disintegrate their lungs that they will die. Now, it seems to me this is a just measure to the employee, and I hope it will pass.

Mr. Byrne — Did I understand you to say that if an employee of a farmer, going through the field mowing weeds, got poisoned with poison ivy, that that would come within this amendment?

Mr. Aiken — I gave that as an illustration; I was not referring to a farmer but a railroad employee mowing weeds along the railroad right of way.

Mr. Byrne — Do you say that a railroad employee, who was mowing weeds or anything else in a field, and who came in contact with poison ivy, that that would come within the scope of this?

Mr. Aiken — I say that that is a question as to whether poison ivy is a disease or whether it is an accident, and just such a case occurred in which the Workmen's Compensation Commission have allowed compensation on the ground that it is an accident.

Mr. Byrne — Does not this really only apply to those diseases which naturally come from a certain class of work like that of bends in the tunnels?

Mr. Aiken — That is the main intent of this proposition.

Mr. Foley — I hope the Committee will advance this amendment. The success of workmen's compensation in our State is sufficient justification for the extension of its provisions to occupational diseases. To my mind, the greatest advance that was made by the adoption of the workmen's compensation amendment was not in the payment of compensation for injuries and death so much as it was in the prevention of industrial accidents. In exactly the same way if we adopt an amendment for compensation for occupational disease, we shall have gone a long step to prevent occupational diseases occurring. The State is more concerned in the conservation of the health and safety of its workers in the prevention of accidents than it is in the payment of compensation after the accident has occurred. Mr. Parsons and Mr. Aiken have referred to the number of trades and manufactures where occupational diseases and poisoning develop. I found in a report of the Ohio State Health Department of 1914, that there were seventy-six different classes of trades where there were some diseases incident to the employment. Now, the boundary line between injury and disease is not clearly defined. In Massachusetts and in Michigan they permit payment of compensation for disease under language similar to the present Constitution, that is for injury arising in the course of employment, and their commissions hold that *injury* is not used in the narrow term — accidental forcible injury — but in the broader sense of injury sustained in the usual course of a trade or manufacture. It is extremely difficult to differentiate, for instance, between a man in a gas plant who has been asphyxiated, and a man who works in a paint concern who contracts lead poisoning. In England they handle the cases very well by defining the various trades affected and the kinds of disease. Thus the objection raised by Mr. Byrne is met and diseases remotely connected with the work such as tuberculosis are not compensated, and there is no abuse of the measure. The Legislature can by law define the trade diseases for which compensation will be paid, for example: lead poisoning, phosphorus poisoning, gas asphyxiation, arsenic poisoning or anthrax which is derived from the handling of wool, pelts and skins.

Mr. Dykman — And what about housemaid's knees?

Mr. Foley — We have excluded domestics in our State.

Mr. Dykman — Why?

Mr. Foley — They are a privileged class, under Mr. Barnes' suggestion.

Mr. Barnes — Not so.

Mr. Foley — The effects of those diseases on the worker are most destructive; they degenerate the human being that works in the trade. Progressive paralysis, blindness and finally death,

seem to be a regular course and a large percentage of those employed contract these diseases. Society should pay in the cost of its products for human wear and tear, as well as other depreciation in manufacture. Mr. Chairman, I hope this amendment will be adopted. It is important not only to pay compensation in the cases where disability or death occurs, but also to prevent occupational disease in our State.

Mr. Barnes — It is quite clear from the development of the votes in this Convention that there is no intention on its part to adhere to the American ideal of equality, but to depart from it as far as possible. In this Convention I wish to read a letter which was addressed to Mr. Tanner by Mr. Wainwright of the Workmen's Compensation Commission. It was written to Mr. Tanner, and Mr. Wainwright has given consent to have it read. It was written in opposition to the bill defeated some time ago reported from the Committee on Legislative Powers and Limitations. He says: "Workmen's compensation is merely the starting point of a sociological program which must be developed and carried in this country the same way it has been done in other countries. If the principle that industry must bear the cost to the workers of work accidents is correct, it must also be right that industry should equally appropriately bear the cost to the workers of occupational diseases directly resulting from work in particular industries. That is the matter now before this Convention. Also if it is right that the workman injured or invalided as a direct result of the kind of work in which they are engaged, should be taken care of, it pretty closely follows that workmen who fall ill from any cause should also be provided for and saved from the public charges through some compulsory system of sickness compensation and insurance such as obtains in Germany, or did obtain before this war; and if these things are right, and have a beneficent effect upon society in general, why should not the principle of social insurance be extended to apply also to unemployment and old age? The best sociological thought of our age both here and abroad make no question that these measures should be gradually adopted. Indeed, this entire program had been adopted and was in fairly successful operation in England, and must in its entirety be adopted in all other civilized countries where the intensive conditions of modern industry obtain." Before the Committee on Industrial Relations of this Convention, Mr. Gompers, the president, I believe, of the American Federation of Labor, who was defeated by 100,000 votes as a candidate for delegate to this Convention said that what he wanted was this: "The power to enable the State to insure workmen against accident, workmen's invalidity, old age and unemployment." If this Convention intends to place itself in the position that it is to be one step in the

program which Mr. Wainwright has here outlined, and which Mr. Gompers also has asked Mr. Parsons' committee to do, of course you have that right and you can go before the electors of this State with your proposal, but it is not my judgment that your action will meet with the approval of the Republican electors of the State of New York. If it does and that is the Republican position, that the Republican party of this State intends to follow the program outlined by Mr. Gompers and Mr. Wainwright, then it is not the Republican party of which I have ever had knowledge, and is not the party to which I belong.

Mr. Parsons — Did not the last party platform approve the principle of workmen's compensation, Mr. Barnes?

Mr. Barnes — I wish we had that here.

Mr. Wickersham — I have it.

Mr. Barnes — Because it is rather interesting in that it attacked the statute; but you must remember, Mr. Parsons, that I was not a responsible factor in the State Convention and that it was controlled by influences which were entirely opposed to what my thought was as to what should be done. As chairman of the State Committee I did not wish to raise any issue there. I just want to read this platform.

Mr. Wickersham — But the gentleman did take issue and so stated on the floor —

Mr. Barnes — I did, on that particular point. I don't think it important for this discussion because I knew perfectly well, that that Convention, on the eve of a State election, would certainly never have opposed the principle involved in workmen's compensation which had been carried by the people of the State by a vote of 500,000 to 194,000 in 1913, when the workmen's compensation amendment to the Constitution was adopted. I don't know how many people there were in this State who thought that there was no compensation to workmen whatsoever before that; I have talked with many men since that time and all say, "Do you mean to say a man can recover for injury, through his own fault and through no negligence on the part of the employer?" When told that that was the case, surprise was expressed, even amazement. "Well," I would say, "the insurance goes to on the cost of conducting the business — which means the cost of living." However, I do not expect that this Convention at this late day, after men's minds have become thoroughly fixed, will take the position which I occupy in this matter, but I cannot let the subject pass without reading into the record Mr. Wainwright's program and Mr. Gompers' request to this Convention.

Mr. Olcott — Mr. Chairman, I don't believe in privileges being granted by the Legislature to a favored few, and I supported, along

with the rest of the scant minority, Mr. Barnes' proposition in that regard. But I said then and I want to repeat it in a three-minute word, that I do believe in it being put to the people at the first opportunity, and that now occurs, whether they did not believe that just compensation for occupational diseases to people who are oftimes industrial heroes of this State, was fair compensation — not a privilege to a class — but fair compensation or not. I believe it is, and I support Mr. Parsons' amendment. Mr. Chairman, if men serve the State in some public and notable way, as in times of war, we love to make whatever compensation for them seems just and lawful and whether that compensation be made in the form of pension, or in any other fashion, they have the honor of their heroic deeds blazoned where he who walks or runs may read. There come times in the industrial life of the State when there are heroes just as noble, and yet lost to fame; when men, either because they believe it essential for them to lend their efforts to the prosecution of a great work, or whether their heroism be, as is generally the case, only in aid of their families, and constrained, perhaps, because of particular fitness for that work, or perhaps because of particular unfitness for any other sort of work, to enter upon heroic occupations which involve the sure sacrifice of either health or life. When a man such as is now compensated under the Workmen's Compensation Act, be injured as the result of an accident, that is something which he could well stare in the face at the commencement of his occupation, because he would read that only a small fraction of 1 per cent. of men so occupied would meet such an accident, and he was willing to take a chance because, all of us believe, deep down in our hearts, no like misfortune will come to us. But when a man, to make a great monument or a great bridge on which the tides of travel or commerce must necessarily cross from one point of land to another, undertakes to go down into a caisson beneath the river bed, and there work in short shifts, with artificial air, but yet long enough shifts to make him come up out of that air with a lurking germ of disease already implanted which shall grow and grow for each descent he makes to his work, then, sir, he is facing heroically for his family, for himself or for the State, what is sure to result in disease or death, and I say, let those of us who profit by his heroism, let those of us who need his work, let contractors who are reckoning that work and the people who pay for it, charge in the debit column as a fair record of the cost of that work, compensation to that man and his family for what he suffered and sacrificed for himself and those near him.

Mr. Sheehan — I would like to ask Mr. Parsons, under the Constitution as it exists now, the person who wilfully brings about his

own injury or a person who is injured solely as a result of his own negligence —

Mr. Parsons — I think Mr. Sheehan was not here when I offered an amendment to strike out the brackets in lines 7, 10 and 14.

Mr. Sheehan — I did not understand your brackets went down to that point.

Mr. Parsons — They do; they go down all through that.

Mr. Sheehan — That is a misprint.

Mr. Parsons — Yes, it is to go back.

Mr. Sheehan — To go back.

Mr. Wickersham — Mr. Chairman, as the question was raised, I merely desire to read a plank in the Republican platform adopted at Saratoga last September. The plank reads: We approve the principle of the compulsory compensation of employees and their families for death or injuries resulting from the risks of their employment, and the protection of the public health, the public morals and the public safety, through the exercise of the police power. We recommend that this governmental power be broadly recognized and safeguarded in the Constitution, but without unnecessarily or unduly interfering with any of the fundamental rights guaranteed by the Bill of Rights. This expression, however, does not involve approval of the present faulty and complicated Workmen's Compensation Law. Since the adoption of that platform, Mr. Chairman, the Workmen's Compensation Law has been re-enacted with amendments, and this measure is designed to supply one of the defects which was found in the Workmen's Compensation Law, and I heartily approve it, and hope it will be adopted.

Mr. Eisner — Mr. Chairman, as I have been listening to Mr. Barnes enunciating his philosophy with regard to this measure, I could not help harking back to the days when I studied at college the subject of chemistry, and I remember that we had two forms, or two branches of that subject, the inorganic chemistry and the organic chemistry, the inorganic chemistry dealing with the metals and the rocks, and it is hard, and it is cold, and it is devoid of anything that is living. The organic chemistry is that which dealt with substances that either live or have lived. And I further reflect, Mr. Chairman, that in the field of inorganic chemistry we had practically exhausted all our knowledge, that there is very little to-day that remains to be discovered. Our book of information is practically complete, but, Mr. Chairman, so far as organic chemistry is concerned all the progress that has been made within the last fifty years has been in that particular branch. And I

applied this to two theories of government; one is Mr. Barnes' theory, and the other is that of those who oppose this theory; one regards government as a mechanism, and that is comparable to the inorganic chemistry; and the other regards government as an organism, and that is the organic chemistry of it. We have been dealing in this Convention heretofore only with those subjects which deal with the mechanism of government. We have enacted the Short Ballot Laws. We have enacted a Judiciary Law. But neither of those reached down to the organic people. We have been talking a great deal about invisible government, but we have said nothing about the invisible governed, and this program which has been brought forward by the Committee on Industrial Relations is designed to lay before the people of this State a program which evidences what this Convention desires to do for those who are governed, but who are invisible, and whose voices can with difficulty be heard. When I went over yesterday some of the information which Mr. Parsons gave me, particularly with reference to certain organic diseases, I learned that in certain occupations the disease of cancer is almost certain to follow those who are engaged in that, namely, seamen, brewers, and in England chimney-sweeps, however strange that may seem, there being a particular form of cancer in the United Kingdom known as chimney-sweep's cancer. When I learned that those who were engaged in any industry where lead is used,— that lead poisoning is almost as certain to ensue as day to follow night; when I found that 31 out of 120 men who had blood poisoning working in the white and red lead industries had worked but a year, and that eight had sickened in weeks, and 39 in less than a year; when I learned that out of 7,500 of those employed in smelting and refining, 1,769 cases of lead poisoning were discovered in the year 1912; that out of 1,600 employed in the white and red lead industry, 388 developed lead poisoning in 18 months. I concluded, Mr. Chairman, that, at least, I would raise my feeble voice, feeble in influence if not in volume, in defense of the measure which is now before us. Mr. Chairman, this was a great week in the history of this nation. The difficulty that we thought we were going to have with a nation across the waters and the consequent loss of many of our American lives, has been happily averted; and in the same week the offices of Secretary of State, State Treasurer and State Engineer have been abolished. Let us ourselves now do something which shall bring squarely before the people of the State that we have given forth in this Convention something that is warm and living, something that is intended for the benefit of the people of the State.

Mr. Clearwater — This, Mr. Chairman, is a subject in which for years I have been interested. For years I was associated with Mr. Wainwright in the collection and collation of statistics regarding the working of the Workmen's Compensation Laws in different states and countries. And it came to pass that Mr. Wainwright represented one wing of the advocates of workmen's compensation, and I represented the other. I advocated a scientific equitable act, and at the request of the Governor of New York placed at his disposal my conclusions upon that subject. The present Workmen's Compensation Act is not scientific. It is extremely unscientific. It should be amended, and I trust that at some time a Legislature will be found with courage to make it so. Such an act as exists upon the continent of Europe, where they have studied the question of the compensation of workmen and the result of occupational diseases for many years and with beneficent results. Now, there are, admittedly, occupations, the carrying on of which is essential to modern civilization, without the carrying on of which there would be a decided stagnation, and it has been agreed by reasonable men that, as humanity profits by the carrying on of them, and as their conduct is essential to the comfort of men, they should bear the cost of conduct. There are some cases which readily will occur to every thinking man. For instance, there is the mining of arsenic in Styria, which the Austrian government has provided for; the making of dye-stuffs in Germany, many of which are poison, for which the German government has provided; the working in cotton and woolen mills in England, Great Britain, glass-blowing in Bohemia, coal mining in Wales, and of all the industries which would seem not to need protection, but which is amply protected as an occupational disease, diamond-cutting in Holland. Now, all of these occupations inevitably bring with them diseases inimical to health and destructive of life. The continental and English governments have provided by law for the assessment, in result of the cost of their conduct upon the industry itself by legislation. In the course of the investigation of this committee, on which Mr. Wainwright and myself served and differed, we found the most astonishing results as to disease and death arising from occupational diseases. The time at my disposal prevents even a recitation of them, but every man who is at all informed as to the progress in manufactures to-day knows that they exist. Just one personal note. During my forty-four years at the bar I never have brought an action of negligence and during the last thirty-five years it has been my fortune to represent large employers of labor, it happens at this moment I represent interests employing over seven thousand men

engaged in hazardous employments, yet, I stand for this amendment. Singular fact, contrary, I think, to the general opinion, is that I have found large employers of men engaged in hazardous occupations share my views. I might say that in the six thousand accidents resulting from the construction of the Ashokan dam with its colossal machinery, which passed through my office, only 15 have resulted in litigation, owing to the willingness of the contractors who use that machinery to accept advice as to adjustment of inevitable accidents resulting from that work. The trouble is, that with the inertia and lethargy of our great profession as to any matter outside our immediate ken we have permitted to grow in our minds a feeling of opposition to humanitarian methods. I have opposed these vagaries, as I have designated them, of Mr. Gompers and Mr. Wainwright. I do not agree with Mr. Wainwright that the writing into the organic law of this State or upon its statute books any such provision as this amendment contemplates is a step in that sociological program which leads to national bankruptcy. Here is the provision of the Federal Constitution, this great Fourteenth Amendment which we too often forget in dealing with these questions: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." That provision is the bulwark against any such sociological program as Mr. Wainwright has advocated — a very able, a very conscientious man, with extreme views upon any important humanitarian question. Mr. Chairman, it has been a labor of love, to make the investigations of which I speak. My long experience, my study of affairs in this and in other countries has led me to the conviction, that, after all, man is his brother's keeper.

Mr. Parmenter — Mr. Chairman, this is positively my last appearance. I cannot let the occasion go by without making one reply to Mr. Barnes' opinion and to the letter which he read, because I think he does not make a distinction which it is only fair should be made, and which certainly I want made for my own self, and that is this, that no legislation which goes beyond conservation of the life, and strength of the individual, should be asked of this present day and age. For myself, consistently and persistently I shall vote against old age pensions or sickness pensions unrelated to illness from work. If a council of doctors had framed the first Workmen's Compensation act it would be a grave

question in my mind whether they would not have chosen occupational diseases instead of accidents. The reason for accidents being chosen, probably, by the layman is that they are more dramatic; the blood flows, the limb is distorted or it is crushed, the call is made and the man is suddenly stricken from his occupation and reduced to a condition of helplessness and carried off to the hospital or to his home. Also let me say at the same time that the conditions under which that accident occurs from an employer's point of view, very often are not at fault. He buys, we will say, the best machinery; something goes wrong and then an accident occurs which was not foreseen. If you take the occupational disease, you have an entirely different problem. There is nothing dramatic about it. Slowly and insidiously the poison or other deleterious substances work upon the system of the victim, and the anæmia (the poverty of blood) and the weakness and helplessness crawl on so slowly that even the victim himself is not aware of them. Again, on the other hand, looking at it from the employer's point of view, we sometimes find that the causes which permit the very slow accumulation of conditions which result in bad health and often lead to death are of the kind that represent either deliberate negligence on the part of the employer or, at the most, a careless indifference to the conditions under which the workmen are employed. It seems to me that the facts which I have stated give to occupational diseases a right to their place in any scheme of workmen's compensation. So far as ultimate disaster is concerned, I say this, from the medical point of view, that taking a large number of cases, the probabilities are, that, as a result of accidents, more men will be restored to ultimate good health than can possibly be the case as the result of a similar number of diseases occurring during employment. There are exceptions, of course, on both sides, but I believe that the averages will show a far greater preponderance of permanent damage to health or resulting death from occupational diseases than from injuries.

Mr. F. L. Young — Two statements have been made here to-day which lead me to make a short response. The first statement is to the effect — if the delegates will be in order I will give expression to what I have in mind; otherwise, I will sit down. The first is to the effect that the proposition before us is un-American and the second statement is that the proposition before us is not Republican. I deny both of those statements, on the part of American citizenship and on the part of the Republican party. It was spoken many years ago for the guidance of all men that the strong must bear the infirmities of the weak, and that doctrine is a doctrine that is incorporated in this proposition. No one will deny the statement that there is sufficient wealth in this country to

take care of the unfortunates for whom this proposition was framed. No one will deny that the distribution of wealth in this country is unequal. No one will deny that there are certain vocations which the misfortunes of life compel men to go into in order that they may make any living for themselves and their families. No one who thinks at all will believe that men select deliberately an employment which will inevitably bring upon them disease. They do it because it is the only employment that they can enter, that they are qualified to enter, and, as Mr. Olcott has said, they do it bravely day after day, knowing that some time or other their energies will flag and they cannot supply their families. This proposition is neither un-American nor un-Republican and the American people ought to repudiate the thought that has been expressed on the floor here to-day. As one Republican, I want to say that when the Republican party departs from the theory that the strong must take care of the worthy weak, I shall no longer be a Republican. I am going to support this measure both here and at the polls hereafter, for I am pledged to do that work.

Mr. Green — I will cut what I say as short as I can. I am very glad that the largest employer of labor in my district, the firm which employs more men than all the rest of them put together, stands just as solidly as my good friend Mr. Young, in favor of this proposition. They employ in excess of seven thousand men, and they wish just such a law as this, and there are many others who look upon it in the same way. I met a gentleman from Washington only a few days ago who has been a large organizer and leader for mercantile and manufacturing associations, great employers of labor, and I was glad to hear him say that instead of opposing every proposition coming from labor organizations, that they had concluded that the thing to do was to meet them more than half way, and do the manly thing along the lines proposed by this very amendment. I stand solidly for it in every respect.

Mr. Curran — I would be unmindful of my duty if I did not say a word in behalf of the amendment reported by the Committee on Industrial Interests and Relations. Now, gentlemen, I am not feeling well enough to express myself as I ought to, but let me call your attention to a few things. I have been deeply interested in the welfare of the working people in bringing about the workmen's compensation law. I attended all of the hearings. I attended the hearing in the Senate Chamber and I heard the insurance men and the railroad corporations and others say that we must have compensation laws, but it is a question as to what should be paid and what should be done. I remember the Foley-Walker bill

and I remember the Jackson-Murtaugh bill. I was opposed to the Foley-Walker bill and in favor of the Jackson-Murtaugh bill, and I remember all the controversies. This is one particular thing I want to call your attention to in behalf of the working people, as the gentlemen says, "the invisible." We talked about what different things ought to be done, in the interest of and for the welfare of not only the business interests but the men who are compelled to be employed every day for a livelihood. I agree that no useless burden or heavy burden should be placed on the employer. I don't want to place the burdens on him, if he is to be enabled to continue as he should continue in his business. But this is what you want to take into mind. You take any manufacturer or large industry, in this State of New York, or any place else, and in equipping their factory, what do they do? It takes hundreds of thousands of dollars in some of the big plants to equip the factories. It calls for expensive machinery. Who has to equip the factory? Who has to pay for the machinery? The industrials, the corporations or the employer has to pay for the machinery. What next, after the machinery is there and placed in position ready for operation? To get men to operate the machinery, and if you don't get the men to operate the machinery you can't do business. If you don't have machinery you can't do business. No matter what the machinery costs, you have got to buy it, and then you have got to get the mechanic to run the machine. Now, supposing we say the gearing is stripped, or the pulley breaks, or anything may happen to some machinery, such as a great big press, which may cost ten, fifteen or twenty thousand dollars to put it in shape. Now, the employer must have that replaced or repaired immediately or that machinery refuses to do its work. How about the man running the machine? He runs his arm into the gearing, or he is injured in some way and where does he go? The reason I call your attention to these facts is this: Mr. Barnes said that Mr. Gompers and Mr. Wainwright in their communications called attention to the fact that the expense would be saddled on the employer or the industry. Where else could it be saddled? Any man in equipping his factory, equips it with men. When the machinery is destroyed, he must get new machinery, no matter what the cost may be. With the man who lost his arm, or lost his leg, or lost his life, the employer should pay that damage. We ask for nothing unjust in these matters. I am perfectly satisfied if you allow the Legislature to have charge of these matters. They will conduct it properly, make thorough investigations, and there would be no danger of their saddling upon the industries of the State an unwholesome burden. I say they will investigate, and they will investigate properly, and I believe the Legislature can

and will do it, and that is the right idea, if you really want to do something for the people. I would like to express myself along different lines in connection with matters that have been called to my attention here with reference to the social conditions and what may be brought about. All I can say is, that you are feeding some of these social organizations fresh beef, where the regular trade means strangle the beast to death; and that is where the mistake has been made, that some of the legislation has been nothing more or less than feeding these organizations, whereas the trade unions want to do away with them. I tell you, gentlemen, you have got a good deal to think of. You say here we are trying to do things for the benefit of the people. Well, the people are the working people, the same as the others. We want no special privileges, and we are not asking for any special privileges, but there are a class of men, working men and women, that are organized in this State, to whom some attention should be given. This particular thing would give them some thought. It may not take place to-day, it may not take place in twenty years from now, but I say in behalf of the working people of this State, give us some thought; give us an opportunity to go out and do as others do; to see that we get just recognition, and see that some things are done for the men, women and children who are compelled to work every day for a livelihood.

The Chairman — The hour for debate has passed, and the question occurs upon the amendment of Mr. Parsons, which the Secretary will read.

The Secretary — On page 2, strike out the brackets in lines 5, 7, 10 and 14.

The Chairman — All who are in favor of the amendment will say Aye. Contrary minded, No. The amendment is carried. The question now occurs upon the proposed amendment as amended.

Mr. Parsons — Mr. Chairman, I call for a rising vote.

The Chairman — All who are in favor of the proposed amendment will rise and remain standing until counted. The gentlemen will be seated. Those opposed will rise and remain standing until counted. The amendment is manifestly carried. The Secretary will read the next order.

The Secretary — No. 836, General Order No. 67, by the Committee on Legislative Organization.

Mr. Brackett — Mr. Chairman, these are the substantial matters in the report. By Section 1, the Senate and Assembly are continued as at present, in precisely the same language as at present. By Section 2, Mr. Chairman, I am going to ask for some attention, as I cannot go on. If it is worth while to present it at all, it is worth while to have it listened to and we can act upon

it in a great deal shorter time if it is listened to. Section 2 provides for the number and terms of the members of the Legislature in each House and leaves such number and terms unchanged. Old Section 3 is entirely stricken out, being a mere specification of the districts into which the State is divided for senatorial purposes. In Section 4, the provision for State enumeration each ten years is stricken out entirely. It is provided that the districts shall be altered in the year 1916 by the Legislature to remain unaltered until the year 1926, the districts to be made as nearly equal as may be. There is in the section the limitation now there, that no one county shall have more than one-third of all the Senators and no two counties,— this is new — as now organized, wholly contained within the limits of a single city, shall have more than one-half of all the Senators. Section 5 provides for the districting of the Assembly, and the districts shall remain as at present until altered by the Legislature in 1916. That it shall remain unaltered then until 1926, when it shall be again altered, or then apportioned according to the Federal census, the districts to be as nearly equal as may be. In this same section is stricken out the provision that the Legislature may abolish Hamilton county. The designation of Assembly districts as specified in the present section of the existing Constitution is stricken out, the provision being that the Assembly district shall remain as at present until altered. It is provided that in the month of June, 1916, the Assembly districts shall be fixed by the boards of supervisors of counties having that power or by the body exercising jurisdiction nearest to that body, and in the city of New York where it now says "the common council", it is changed to "The Board of Aldermen", the provision for the districting by the local authorities, the supervisors and the aldermen, being precisely as it is at the present time, according to the enumeration or the census which has just been taken and in ten years from now, in 1926, it is to be apportioned upon the basis of the last preceding Federal census. This provision, leaving out the census, the State enumeration, and making the apportionment according to the census, the Federal census, requires that the provision as to the location of blocks contained in the present Constitution, as to whether they shall be contained in one district or another, should be "the election district", because the Federal census does not take the census by blocks, and therefore it is changed to the election district. Section 7 of the existing Constitution which provides that "No member of the legislature shall receive any civil appointment within this state, or the Senate of the United States, from the governor, the governor and Senate, or from the legislature, or from any city government, during the time for which

he shall have been elected;" and providing that all such employment shall be void, has been totally eliminated, as has been Section 8, which provides for persons who shall be eligible to the Legislature, and removes the restriction that no person who has been within one hundred days a member of Congress, a civil or military officer of the United States or an officer in a city government, and the provision that if he shall after his election accept such an appointment, his seat shall become vacant. The provision is retained in exactly the same language as at present, for the election of Senators, and members of the Assembly, on the Tuesday succeeding the first Monday of November, unless otherwise ordered, or directed by the Legislature, and the final provision is transferred from Article X, Section 6, from that section to this Article III, and the provision is made that it shall be given an appropriate number. That section, Section 6, Article X, is in this language: "The political year and legislative term shall begin on the first day of January, and the legislature shall every year assemble on the first Wednesday of January".

Mr. Marshall — Will you point out the language which declares that the Assembly districts shall remain unaltered until 1916. I find that language with regard to the Senate, but I have been unable to find similar language with regard to the Assembly. I may have overlooked it.

Mr. Brackett — Give me but a minute and I will find it.

A Delegate — Page 12, line 17.

Mr. Marshall — No, line 17 does not cover it. It reads: "Such district shall remain unaltered until the year one thousand nine hundred and twenty-six, at the regular session of the legislature in which year, such members of the assembly shall again be apportioned by the legislature, according to the preceding federal census."

Mr. Brackett — Mr. Marshall, that is because the members of the Legislature, the members of the Assembly, will be elected this fall, under the present Constitution.

Mr. Marshall — It appears, that there shall be an apportionment in 1916 of Senate districts, but there is no such provision as to the Assembly district.

Mr. Brackett —As I say, that is because the Assemblymen are elected this year, under the present Constitution.

Mr. Marshall — Perhaps that is correct, but I did not know but what you had overlooked it.

Mr. Brackett — No, we did not.

Mr. Wagner — Mr. Chairman, I offer an amendment.

The Chairman — Is this as to the first section?

Mr. Wagner — Several sections.

The Chairman — Wouldn't it be better to hold it until we are considering the specific section?

Mr. Wagner — I do not know whether we are going to consider this section by section or take it up as a whole.

The Chairman — That is the rule.

Mr. Wagner — Of course, that is within the discretion of the Committee.

The Chairman — Unless the Committee otherwise provides, we will proceed, section by section.

Mr. Wickersham — If the Chairman of the Committee will permit, I would like to ask him a question.

Mr. Brackett — Yes.

Mr. Wickersham — Senator Brackett, the part at the end, the last two lines, on page 17, and then on page 18, it is all new matter, isn't it, and should it not be italicized?

Mr. Brackett — No, it is not new matter.

Mr. Wickersham — Not new matter?

Mr. Brackett — No.

Mr. Wickersham — It is transposed?

Mr. Brackett — I think it is present section 9. The only reason for omitting the number is that it will have to be renumbered later on.

Mr. Wickersham — It is entirely in the language of the present Constitution?

Mr. Brackett — Yes.

The Chairman — May I ask the gentleman from Saratoga whether he wishes this to be taken up section by section?

Mr. Brackett — Mr. Chairman, I haven't a wish on earth about it. I am told, in the manner I generally get such information, it not having been given to me directly, I have not been consulted or asked about it — I am told that it is understood that there is to be a radical change made by this body. Now, whether it is changed too much or too little, does not interest me. It cannot be changed too much or too little to suit me. I am perfectly willing. I should have been glad if I had been told in advance just exactly what was intended to be done, but inasmuch as that has not been done, I have no wish with respect to it at all.

Mr. Wickersham — Mr. Chairman, I suggest that it be taken up under the rules.

The Chairman — The Secretary will read section 1.

Mr. Wagner — Mr. Chairman, my proposed amendment relates more specifically to section 4 of the bill.

The Chairman — May the Chair inquire whether the amendment as proposed by Mr. Wagner has anything to do with the first section?

Mr. Wagner — No.

The Chairman — The Chair suggests that the gentleman from New York hold his amendment until the section in question is reached.

Mr. Wagner — Very well.

The Chairman — The Secretary will read the first section.

The Secretary — Section 1. The Legislative power of this State shall be vested in the Senate and Assembly.

The Chairman — The question occurs then upon the adoption of the first section. All those in favor of the adoption of this section will say Aye, contrary No. The section is adopted.

The Secretary will read the second section.

The Secretary — Section 2. The Senate shall consist of fifty-one members who shall be chosen for two years. The Assembly shall consist of one hundred and fifty members, who shall be chosen for one year.

Mr. E. N. Smith — Mr. Chairman, I wish to offer an amendment.

Mr. Haffen — Mr. Chairman, I have an amendment respecting that section.

The Chairman — The Secretary will read the first amendment presented.

The Secretary — By Mr. Haffen. On page 1, line 9, between the words "fifty" and "members" insert the word "three" making the sentence read: "The Assembly shall consist of one hundred and fifty-three members who shall be chosen for one year".

Mr. Haffen — Mr. Chairman, the reason for the introduction of that amendment is because of the fact that some of the important counties may be reduced if the number is to remain at 150. For instance, Queens county has 60,000 more population than has been accorded to it according to the first enumeration received by one of our members, and consequently it is entitled to one more assemblyman than has been given in the primary, tentative plan. Then there is Oneida also, and there are others which will be reduced if the number is kept at 150, and my amendment calls for 153, in order that justice may be given to some of the counties that now would be, under this reappointment, reduced.

Mr. E. N. Smith — Mr. Chairman, the amendment which I have offered amends, proposes to amend, not only Section 1, but other sections in relation to the apportionment.

Mr. Wiggins — Mr. Chairman, may the amendment be read?

The Chairman — The Secretary will read the amendment in full for the information of the committee.

The Secretary — By Mr. E. N. Smith. On page 1, line 5, strike out the words "fifty-one" and insert the word "fifty"; and

strike out in line 6, strike out the bracket in line 6, and insert a bracket after the period. In line 8, strike out the word " who " and insert in place thereof the word " they ".

Mr. E. N. Smith — May the rest of it be read, Mr. Chairman?

The Chairman — For the information of the committee, the Secretary will read the other parts of this amendment so we may have it before us as a whole.

The Secretary — On page 2, line 1, strike out the bracket and in line 4, insert a bracket before the word " district ". On page 10, line 14, strike out all after the period and strike out line 15. On page 11, strike out the brackets in lines 24 and 25. On page 12, strike out the brackets and the italicized words in lines 1 and 2. Strike out the words " fifty-one " on lines 4 and 5, and insert the word " fifty " in the place thereof. Strike out the brackets in lines 5 and 10.

Mr. E. N. Smith — When this question of apportionment was up before I supposed that it was settled, so far as this Convention was concerned, and the purpose of this proposed amendment is to leave the question, or provisions in reference to apportionment, just as they are now contained in the Constitution, or leave the number of Senators and numbers of Assemblymen, just as now provided in the Constitution, leaving the provision for increase of Senators just as contained in the Constitution. Now, if we are going into the question of apportionment, we are going to get into some serious difficulties, I think.

Mr. Wiggins — Does this proposal go into the question of apportionment?

Mr. E. N. Smith — What proposal?

Mr. Wiggins — The one you are now considering from the Committee on Legislative Organization.

Mr. E. N. Smith — It changes the ratio of representation, it changes the provision in reference to two adjoining counties and it makes several changes which affect the apportionment of Senators and Assemblymen.

Mr. Wiggins — I understand that fully, but it does not go into the question of apportionment.

Mr. E. N. Smith — It does not go into the question of apportionment, but modifies the plan of apportionment as suggested All I say is this, that I believe it is better to leave this question of apportionment alone. I don't think it is necessary to go into the changing of the basis of representation, or the principle upon which the apportionment is to be made, and I therefore offer this proposal with a view that in this regard the provisions of the Constitution will be left just as they are, and I do it, because when this question was up before I felt and came to the conclusion

that that was the thought and the plan in the minds of this Convention.

Mr. Quigg — I only want to say this to the committee, that I doubt very much whether there is any member of our Committee on Legislative Organization who will take any particular interest in urging these amendments on the floor. We thought there was no reason why the text of the new Constitution should be lumbered down with pages that did not have to be there, so we have taken them out. We have done no legislating here that is novel at all, except that we have not forced the State to take a census, and that we have thought it unnecessary to qualify members of the Legislature as they have been heretofore qualified or disqualified. As to those changes and the use of language which limits representation in the city of New York precisely in the same way that it is now limited, we made no changes at all. If the Convention is so afraid of even looking at the article on apportionment, even glancing at it, notwithstanding the fact it does not apportion or seek to apportion or hinder the Legislature in apportioning, except to make the ratio for it that it shall divide the number of Assemblymen and Senators according to the population — if the Convention is not willing even to cut out of the printing bill the six or eight pages that will have to be there, why, of course, there is not much occasion to take up the time with this question.

Mr. Wickersham — It seems to me there are certain things in this amendment that ought to be adopted, that is, we ought to take out the obsolete matter. Aside from that, I think we ought to leave the basis of apportionment, the rules for making the reapportionment, just as they are. There is one change made that I think has not been mentioned, that is as to prescribing the rule of reapportionment. The Committee has substituted the election district for the block in the city.

Mr. Quigg — For the reason, if you will allow me, that we have not demanded that the State shall take a census. We have thought that there was so little necessity for that, that, while the new article does not forbid it at all, the Legislature will have full power to take a census or enumeration if it wished, still we have left it so that the distribution may be made in connection with the Federal census, and it was to accommodate that that we made the change from blocks to election districts.

Mr. Wickersham — Mr. Chairman, as I understand it, the State's census for the year 1915 has been taken pursuant to the mandate of the existing Constitution, and there would seem to be no reason why the rule of apportionment laid down in the Constitution should not remain; and, as to the future, perhaps the alternative of the Federal or State census might be substituted. As I understand the amendment of Mr. E. N. Smith, it

does not attempt to amend by restoring the obsolete portions of the section, the enumeration of districts, but it simply seeks to restore those portions which are rules of apportionment, the rules which exist in the present Constitution. Am I right?

Mr. E. N. Smith — The gentleman's understanding is correct.

The Chairman — Does Mr. Smith desire to have the floor yielded to him? Does the gentleman yield to Mr. Smith?

Mr. E. N. Smith — I was just answering the gentleman's question. I said that you had fairly stated the purposes of my proposal.

Mr. Wagner — May we have the amendment read again?

The Chairman — The Secretary will read the amendment so far as it relates to the second section. Is that what you desire?

Mr. Wagner — That is what I am at sea upon. The gentleman who just addressed the Chair discussed the entire question, and I was wondering whether we had changed our rule and are going to take up the amendment as a whole.

The Chairman — The Chair understands the gentleman from New York to ask that the whole amendment be read again.

Mr. Wickersham — In reply to the gentleman's suggestion, I will say that the whole subject was involved in the amendment to Section 2, and that led me to make the inquiry that I did. I did not mean to depart from the rule but merely to elucidate the character of the amendment to Section 2.

Mr. Wagner — That is why I wanted to have the amendment read again.

The Chairman — Does the gentleman want the entire amendment read?

A Delegate — The entire amendment.

The Chairman — The Secretary will again read the entire amendment offered by Mr. Smith.

Mr. Wickersham — Mr. Chairman, I think, perhaps it would be well for us to suspend here — let us have the amendment read and then I will move that we rise.

The Chairman — The Secretary will read the amendment.

The Secretary — On page 1, line 5, strike out the words "fifty-one" and insert the word "fifty", and strike out the bracket. In line 6, insert a bracket after the period. In line 8, strike out the word "who" and insert in the place thereof the word "they". On page 2, line 1, strike out the bracket.

Mr. Wickersham — Mr. Chairman, that is the third section.

Mr. Root — Let him read it all.

The Chairman — We had better have the entire amendment read so that the members can have the whole matter before them during recess. The Secretary will proceed.

The Secretary — On page 2, line 1, strike out the bracket, and in line 4 insert a bracket, before the word "district." On page 10, line 14, strike out all after the bracket, and strike out line 15. On page 11, strike out the brackets in lines 24 and 25. On page 12, strike out the bracket and the italicized words on lines 1 and 2. On lines 4 and 5, strike out the words "fifty-one" and insert the word "fifty" in place thereof. In lines 5 and 10, strike out the brackets.

Mr. E. N. Smith — I think in line 5, page 12, there should be a comma after "member" instead of a period.

The Chairman — The Clerk will note the change.

Mr. Haffen — Mr. Chairman, I also presented an amendment which I should like to have read.

The Chairman — Will the gentleman send the amendment to the desk?

Mr. Haffen — It is there now.

The Chairman — The Secretary will read Mr. Haffen's amendment.

The Secretary — By Mr. Haffen: On page 1, line 9, between the words "fifty" and "members" insert the word "three", making the sentence read "The Assembly shall consist of one hundred and fifty-three members who shall be chosen for one year". On page 11, line 1, strike out the word "six" and substitute in place thereof the word "two", making it read "One thousand nine hundred and twenty-two". On page 11, lines 5, 6, and 7, strike out the following: "According to the last State enumeration or if no State enumeration shall have been taken within a period of five years prior to such apportionment then".

Mr. Haffen — Mr. Chairman, the reason for that is the fact that the next Federal census will be taken in 1920, and we could save five or six hundred thousand dollars to the State of New York if we cut out that portion which refers to enumeration by the State. At best, it is nothing but political. I would make it read "according to the preceding Federal census"; take that instead. It would save five or six hundred thousand dollars to the State of New York, and, as I said before, at best, it is nothing but political whether it is Democratic or Republican.

Mr. Wickersham — Mr. Chairman, I move the committee do now rise, report progress and ask leave to sit again.

The Chairman — You have heard the motion. All in favor of the motion will say Aye, contrary No. It is carried. (The President resumes the Chair.)

The President — The Convention will come to order.

Mr. Sears — As Chairman of the Committee of the Whole, I beg to report that the Committee of the Whole has had under

consideration special order which is General Order No. 37, has amended the same and reports favorably upon the special order as amended. I would report further that the Committee of the Whole has had under consideration special order which is General Order No. 53, has amended the same and reports favorably on the order as amended. I would further report that the Committee of the Whole has had under consideration special order which is General Order No. 67, has made progress thereon and begs leave to sit again.

The President — The question is first on agreeing to the report of the Committee of the Whole recommending the passage of General Order No. 37 with amendments. All in favor of agreeing to the report will say Aye, contrary No. The report is agreed to. The next question is upon agreeing to the report of the Committee of the Whole recommending the passage of General Order No. 53 with amendments. All in favor will say Aye, contrary No. The report is agreed to. The two amendments are advanced to the order of third reading. The question now is upon granting leave to the Committee of the Whole to sit again for consideration of General Order No. 67. All in favor will say Aye, contrary No. The leave is granted.

Mr. Rodenbeck — The Committee on Revision and Engrossment presents the following report.

The Secretary — Mr. Rodenbeck, from the Committee on Revision and Engrossment, to which was referred Proposed Constitutional Amendment No. 861, Introductory No. 696; also Proposed Constitutional Amendment introduced by Mr. Franchot, No. 860, Introductory No. 131, reports the same as examined, found correct and properly engrossed.

The President— The question is on agreeing to the report of the Committee. All in favor will say Aye, contrary No. The report is agreed to.

The Secretary — Mr. Rodenbeck, from the Committee on Revision and Engrossment, to which was referred Proposed Amendment introduced by the Committee on Governor and Other State Officers, No. 863, Introductory No. 716, also Proposed Amendment proposed by the Committee on Cities, No. 862, Introductory No. 713, reports the same as examined, found correct and properly engrossed.

The President — The question is upon agreeing to the report of the Committee. All in favor will say Aye, contrary No. The report is agreed to. The Convention stands in recess until half-past eight this evening.

Whereupon, at 5:45 p. m., the Convention took a recess until 8:30 p. m. of the same day.

AFTER RECESS—8:30 P. M.

The President—The Convention will come to order.

Mr. Wickersham — Mr. President, I suggest the absence of a quorum and ask that the roll be called.

The President — The Secretary will call the roll.

Upon the call of the roll the following delegates responded: Adams, Ahearn, Aiken, Allen, F. C., Angell, Austin, Baldwin, Bannister, Barnes, Barrett, Baumes, Beach, Bell, Bernstein, Berri, Betts, Blauvelt, Bockes, Brenner, Bunce, Buxbaum, Clearwater, Clinton, Cobb, Coles, Cullinan, Curran, Dahm, Daly, Dennis, Deyo, Dick, Donnelly, Donovan, Dooling, Doughty, Dow, Drummond, Dunlap, Dunmore, Dykman, Eggleston, Eisner, Endres, Eppig, Fancher, Fobes, Fogarty, Foley, Ford, Franchot, Frank, Green, Greff, Griffin, Haffen, Harawitz, Heaton, Johnson, Jones, Landreth, Latson, Law, Leary, Leggett, Lennox, Lincoln, Linde, Lindsay, Low, McKean, McKinney, Mandeville, Mann, Marshall, Martin, F., Martin, L. M., Mathewson, Mealey, Meigs, Mereness, Mulry, Newburger, Nicoll, C., Nicoll, D., Nixon, Nye, O'Brian, J. L., O'Brien, M. J., Olcott, Ostrander, Parker, Parmenter, Parsons, Pelletreau, Phillips, S. K., Potter, Quigg, Reeves, Rhees, Richards, Rodenbeck, Rosch, Ryan, Ryder, Sanders, Sargent, Saxe, J. G., Saxe, M., Schurman, Sears, Sharpe, Sheehan, Shipman, Slevin, Smith, A. E., Smith, E. N., Smith, R. B., Smith, T. F., Stanchfield, Standart, Steinbrink, Stimson, Stowell, Tierney, Tuck, Unger, Vanderlyn, Van Ness, Wafer, Wagner, Ward, Waterman, Webber, C. A., Weber, R. E., Weed, Westwood, Wheeler, Whipple, White, C. J., Wickersham, Wiggins, Winslow, Wood, Young, C. H., Young, F. L., President.

The President — 132 delegates having answered to their names, a quorum of the Convention is present. The Secretary will read the next order on the third reading calendar. Third reading No. 21, print No. 862 is the report of the Committee on Cities as amended. The title having been read, the Secretary is about to read the text.

The Secretary — *The Delegates of the People of the State of New York, in Convention assembled, do propose as follows:* Section 1. Section 2. Section 3.

The President — The Secretary will call the roll on final passage of the bill.

Those who voted in the affirmative were: Adams, Ahearn, Aiken, Allen, F. C., Angell, Austin, Baldwin, Bannister, Barnes, Barrett, Baumes, Beach, Bell, Bernstein, Berri, Betts, Blauvelt, Bockes, Brenner, Bunce, Buxbaum, Clearwater, Cobb, Cullinan,

Curran, Daly, Dennis, Deyo, Dick, Donnelly, Donovan, Dooling, Doughty, Dow, Drummond, Dunlap, Dunmore, Dykman, Eggleston, Eisner, Endres, Eppig, Fancher, Fobes, Fogarty, Foley, Ford, Gladding, Greff, Griffin, Haffen, Harawitz, Heaton, Johnson, Jones, Landreth, Latson, Law, Leary, Leggett Lennox, Lincoln, Lindé, Lindsay, Low, McKean, McKinney, Mandeville, Mann, Marshall, Martin, F., Martin, L. M., Mathewson, Mealey, Meigs, Mereness, Mulry, Newburger, Nicoll, C., Nicoll, D., Nixon, Nye, O'Brian, J. L., O'Brien, M. J., Olcott, Ostrander, Parker, Parmenter, Parsons, Pelletreau, Phillips, S. K., Quigg, Reeves, Rhees, Richards, Rodenbeck, Rosch, Ryan, Ryder, Sanders, Sargent, Saxe, J. G., Saxe, M., Schurman, Sears, Sharpe, Sheehan, Shipman, Slevin, Smith, A. E., Smith, E. N., Smith, R. B., Smith, T. F., Stanchfield, Standart, Steinbrink, Stimson, Stowell, Tierney, Tuck, Unger, Vanderlyn, Van Ness, Wadsworth, Wafer, Wagner, Ward, Waterman, Webber, C. A., Weber, R. E., Weed, Westwood, Wheeler, Whipple, White, C. J., Wickersham, Wiggins, Winslow, Wood, Young, C. H., Young, F. L., President.

Th President — 142 delegates voting, all in the affirmative, the proposed amendment having received the affirmative vote of a majority of the delegates elected to the Convention, is adopted.

The President — Third reading No. 23, print No. 856, report by the Committee on Public Utilities. The Secretary will read the title.

The Secretary — Third reading No. 23, print No. 856, by the Committee on Public Utilities. To amend Article 5 of the Constitution by adding a new section thereto relating to Public Service Commissions.

Mr. Wickersham — Mr. President, I ask unanimous consent to lay that aside until the end of the calendar because if the provision relating to Governor and Other State Officers is adopted, it seems to be unnecessary to adopt that.

The President— Is there objection? The Chair hears none. It is so ordered. Third reading No. 24, print No. 854, by the Committee on State Finances. The Secretary will read.

The Secretary — Third reading No. 24, print No. 854, by the Committee on State Finances. To amend Section 20 of Article 3 of the Constitution in relation to the appropriation of public moneys for construction purposes.

The President — The title having been read, the Secretary will read the text.

The Secretary — *The Delegates of the People of the State of New York, in Convention assembled, do propose as follows:* Section 1. Section 2.

The President — The Secretary will call the roll, and those voting in the affirmative will say Aye. Those in the negative No.

Those who voted in the affirmative were: Adams, Ahearn, Aiken, Allen, F. C., Angell, Austin, Baldwin, Bannister, Barnes, Barrett, Baumes, Bayes, Beach, Bell, Bernstein, Berri, Betts, Blauvelt, Bockes, Brenner, Bunce, Buxbaum, Clearwater, Cobb, Coles, Curran, Dahm, Daly, Dennis, Deyo, Dick, Donnelly, Donovan, Dooling, Doughty, Dow, Drummond, Dunlap, Dunmore, Eggleston, Eisner, Endres, Eppig, Fancher, Fogarty, Foley, Ford, Franchot, Frank, Gladding, Green, Greff, Griffin, Haffen, Harawitz, Heaton, Johnson, Jones, Landreth, Latson, Law, Leary, Leggett, Leitner, Lennox, Lincoln, Linde, Lindsay, Low, McKean, McKinney, Mandeville, Mann, Martin, F., Martin, L. M., Marshall, Mathewson, Mealey, Meigs, Mereness, Mulry, Newburger, Nicoll, D., Nixon, Nye, O'Brian, J. L., O'Brien, M. J., Olcott, Owen, Parker, Parmenter, Parsons, Pelletreau, Phillips, J. S., Phillips, S. K., Potter, Quigg, Reeves, Rhees, Richards, Rodenbeck, Rosch, Ryan, Ryder, Sanders, Sargent, Saxe, J. G., Saxe, M., Schurman, Sears, Sharpe, Shipman, Slevin, Smith, A. E., Smith, E. N., Smith, R. B., Smith, T. F., Stanchfield, Standart, Steinbrink, Stimson, Stowell, Tierney, Tuck, Unger, Vanderlyn, Van Ness, Wadsworth, Wafer, Wagner, Ward, Waterman, Webber, C. A., Weber, R. E., Weed, Westwood, Wheeler, Whipple, White, C. J., Wickersham, Wiggins, Winslow, Wood, Young, C. H., Young, F. L., President.

Those who voted in the negative were: Brackett, Ostrander.

Mr. Bayes — I should like to have it appear that, if present, I would have voted in the affirmative on third reading No. 21.

The President — The Secretary announces that 146 voted in the affirmative and two voted in the negative. This proposed amendment having received the affirmative vote of a majority of the delegates elected to the Convention, is adopted. The Secretary will read the next number.

The Secretary — No. 855 from the Committee on Future Amendments.

The President — The Secretary will read the text.

The Secretary — "The Delegates of the People of the State of New York in convention assembled, do propose as follows: To amend article 14 of the Constitution. Section 1."

Mr. C. A. Webber — Mr. President, I would like to call attention to the fact that there is a very serious defect in this bill. It requires the meeting of the delegates on the first Tuesday after the canvass for the votes of the delegates at large. The vote might be canvassed on a Monday, and this would require the Convention to meet the next Tuesday, the next day.

Mr. Barnes — Mr. President, I would like to inform the gentleman from Kings that that matter has been thoroughly discussed in the Committee of the Whole. The delegates who are elected will be known within a week after election. The canvass of the vote is a purely perfunctory matter. It will cause no inconvenience whatsoever.

Mr. C. A. Webber — I do not see how they can receive their certificates from the Secretary of State before the votes have been canvassed.

The President — The recollection of the Chair is that the subject was fully debated. The Secretary will proceed with the reading of the section.

The Secretary — Section 1. Section 2. Section 3. Section 4.

The President — The Secretary will call the roll. As their names are called those in favor will say Aye; those opposed, No.

Those who voted in the affirmative were: Adams, Ahearn, Aiken, Allen, F. C., Angell, Austin, Baldwin, Bannister, Barnes, Barrett, Baumes, Bayes, Beach, Bell, Bernstein, Berri, Betts, Blauvelt, Bockes, Brenner, Bunce, Buxbaum, Clearwater, Cobb, Coles, Curran, Daly, Dennis, Devo, Dick, Donnelly, Donovan, Dooling, Doughty, Dow, Drummond, Dunlap, Dunmore, Dykman, Eggleston, Eisner, Endres, Eppig, Fancher, Fogarty, Foley, Ford, Franchot, Frank, Gladding, Green, Greff, Griffin, Haffen, Harawitz, Heaton, Johnson, Jones, Landreth, Latson, Law, Leary, Leggett, Lennox, Lincoln, Linde, Lindsay, Low, McKean, McKinney, Mandeville, Mann, Marshall, Martin, F., Martin, L. M., Mathewson, Mealy, Meigs, Mereness, Mulry, Newburger, Nicoll, C., Nicoll, D., Nixon, Nye, O'Brian, J. L., O'Brien, M. J., Olcott, Ostrander, Owen, Parker, Parmenter, Parsons, Pelletreau, Phillips, J. S., Phillips, S. K., Quigg, Reeves, Rhees, Richards, Rodenbeck, Rosch, Ryan, Ryder, Sanders, Sargent, Saxe, J. G., Saxe, M., Schurman, Sears, Sharpe, Shipman, Slevin, Smith, E. N., Smith, R. B., Smith, T. F., Stanchfield, Standart, Steinbrink, Stimson, Stowell, Tierney, Tuck, Unger, Vanderlyn, Van Ness, Wadsworth, Wafer, Wagner, Ward, Waterman, Webber, C. A., Weber, R. E., Weed, Westwood, Wheeler, Whipple, White, C. J., Wickersham, Wiggins, Winslow, Wood, Young, C. H., Young, F. L., President.

The President—One hundred and forty-five in the affirmative, none in the negative. A majority of all the delegates elected to the Convention having cast their votes in favor of the amendment, it is declared adopted. The Clerk will read the title of the next order.

The Secretary — No. 863, by the Committee on Governor and Other State Officers.

Mr. Bell — I move to recommit this bill to the Committee of the Whole with instructions to report forthwith, amended as follows.

The President — The time for that is past. No motion to amend can be received. The Secretary will continue the reading.

The Secretary — *The Delegates of the People of the State of New York, in Convention assembled, do propose as follows:* Section one. Section two. Section three.

The President — The Secretary will call the roll and the delegates in favor of the passage of the bill will answer Aye as their names are called. Those opposed will answer No.

Those who voted in the affirmative were: Adams, Aiken, Allen, F. C., Angell, Austin, Bannister, Barnes, Barrett, Baumes, Bayes, Beach, Bell, Bernstein, Berri, Blauvelt, Brenner, Buxbaum, Clearwater, Clinton, Cobb, Coles, Cullinan, Curran, Dennis, Deyo, Dick, Donnelly, Donovan, Doughty, Dow, Dunlap, Dunmore, Dykman, Eggleston, Eisner, Fancher, Fobes, Foley, Ford, Franchot, Frank, Gladding, Greff, Hale, Heaton, Johnson, Jones, Landreth, Latson, Law, Leary, Leggett, Lennox, Lincoln, Linde, Lindsay, Low, McKean, McKinney, Mandeville, Mann, Martin, F., Martin, L. M., Marshall, Mathewson, Mealey, Meigs, Nicoll, C., Nicoll, D., Nixon, O'Brian, J. L., O'Brien, M. J., Olcott, Owen, Parmenter, Parsons, Pelletreau, Phillips, J. S., Phillips, S. K., Potter, Reeves, Rhees, Richards, Rodenbeck, Rosch, Ryan, Ryder, Sanders, Sargent, Saxe, J. G., Saxe, M., Schoonhut, Schurman, Sears, Sharpe, Sheehan, Shipman, Slevin, Smith, A. E., Smith, E. N., Smith, T. F., Stanchfield, Standart, Steinbrink, Stimson, Tuck, Unger, Vanderlyn, Van Ness, Wadsworth, Wagner, Waterman, Webber, C. A., Weber, R. E., Weed, Westwood, Wheeler, Whipple, White, C. J., Wickersham, Winslow, Wood, Young, C. H., Young, F. L., President.

Those who voted in the negative were: Ahearn, Baldwin, Betts, Bockes, Brackett, Bunce, Dahm, Daly, Dooling, Drummond, Endres, Eppig, Fogarty, Green, Griffin, Harawitz, Kirby, Mereness, Mulry, Newburger, Nye, Ostrander, Parker, Quigg, Smith, R. B., Stowell, Tierney, Wafer, Ward, Wiggins.

When Mr. Baldwin's name was called he said: I desire to explain my vote and in doing so I will complete the paragraph that was ended by the lapse of time last evening when the Chair's gavel put a period where there should only have been a comma. I was discussing the argument that was advanced by the advocates of this bill in relation to the management of a business corporation and the benefit that they derive from the continuous management that is displayed by a corporation as compared with that of

State government. I want to remind the delegates that the stockholders of the New York, New Haven and Hartford railroad enjoyed the short ballot for a good many years, as did also the stockholders of the Rock Island and many other large business corporations which will readily occur to your mind. I am opposed to this because of the principle involved. The advocates of the bill say it is not what they desired but that it is a step in the right direction. With them I disagree. In later years we are all the while seeking after the new. Every time an ambitious politician desires to get before the public he gets a new kind of self-starter. A few years ago we had the cry "the direct election of United States Senators," "the direct primary." The people took them as they will take any nostrum that is presented, even for rheumatism, if it is well advertised. And now, before we have had a chance to see whether this new principle of government will cure our rheumatism, we are seeking after something new, with a new kind of self-starter, which is the exact opposite because it takes away the power instead of giving more power to the people. The principle is wrong. At the time of the foundation of our government there had been pure democracies and there had been aristocracies. Both were faulty and our fathers embodied in a Constitution the wisdom of the ages by giving us a new principle, the principle of republican government. Pure democracy with our ten millions of people is impossible. The opposite, aristocracy, is hostile to all our traditions. Let us cling to the middle course — representative government. Our Constitution does not need change. It needs repose.

Mr. President, I vote No.

When Mr. Barnes' name was called he said: Because I disagree entirely with the conclusion reached by Mr. Baldwin, but, agreeing entirely with his premise, I expect to withdraw my request shortly and vote in the affirmative. But I wish to say that, although this bill has been clothed with an atmosphere that might indicate aristocracy, I can see nothing in it but a proper classification of the departments of the State, and the proper election, with possibly one exception, of those officers who ought to be elected, and the appointment of those who ought to be appointed. I withdraw my request to be excused and vote Aye.

When Mr. Betts' name was called he said: I wish to be excused from voting and briefly state my reasons. I am opposed to this proposition for two reasons: first, it does not represent the principle for which the advocates of the short ballot — the kingmakers — have contended; second, it does not represent the principle for which the defenders of the American elective representatives of democracy have contended. It represents no principle,

but compromise. A brazen falsehood and a timid truth are parents of compromise. The delegate from New York, Mr. Delancey Nicoll, in discussing this proposed amendment, when he came to the compromise feature of it, said: "I am now standing on delicate ground." This suggested to my mind that this measure is the delicate and deformed child of timid statemanship. It is the natural child of expediency. I am opposed to this proposition because it is a step away from American democracy. It is a step back to monarchy. It is a step in the wrong direction. The people of this State have a right to elect their own State officials. I am in favor of their retaining that right. I withdraw my request to be excused and vote No.

When Mr. Bockes' name was called he said: I wish to be excused and briefly state my reason. I favor the reorganization plan of this bill very earnestly, and I deem that part a necessity under existing conditions. However, I am opposed still more earnestly to that part of the bill which recommends the principle of the appointment of State officers instead of their election. I believe that it is a scheme to govern the people instead of letting us govern ourselves. I therefore vote No.

When Mr. Bunce's name was called he said: Mr. President, I desire to be excused from voting and to briefly state my reasons for voting as I am going to vote. I am very much in favor of the provisions relating to the reorganization of the State government, but I am absolutely opposed to the short ballot.

When Mr. Dahm's name was called he said: I desire to be excused from voting and will briefly state my reasons. For fear that the constituency of Kings county might confuse me with my brothers on the Republican side of the House and accuse me of selling myself for future patronage, I beg to withdraw my request to be excused and vote No.

When Mr. Deyo's name was called he said: Mr. President, in explaining my vote I wish to read a letter received by me from Hon. James T. Rogers, for many years a member of Assembly and for several years chairman of the Ways and Means Committee, and the Republican leader of the Assembly. Mr. Rogers writes as follows: "I desire to intrude upon your time and patience long enough to voice my strong convictions in favor of the much discussed Short Ballot Constitutional Amendment. The time was in my less mature years when, like many others to-day, I would have dismissed this proposition as absurd and unworthy of serious thought. That was during the earlier portion of my nine years of service in the Assembly. Indeed, during all those years the constant activities incident to my official duties, together with the artificial atmosphere which nearly always

pervades the legislative halls often prevented me from attaining the larger vision and correct perspective upon various public questions. The intervening years since my retirement in 1907 have afforded me much opportunity for calm reflection and more studious deliberation upon governmental problems; and I am frank to confess that this chance for clearer thinking has led to the modification of many of my preconceived opinions. The great desirability of the Short Ballot idea in our elections is now very clear to my mind. It would of course be idle for me to lengthen this letter by an elaboration of the arguments in its favor. You are entirely familiar with them. I do not mean to be understood as insisting upon the adoption of the pending amendment in its present form without change. Intelligent debate will doubtless disclose various details which can be modified to advantage. But I do want to go on record as being emphatically in favor of the fundamental proposition, and shall be glad if you can consistently aid in embodying it in our organic law." I vote Aye.

When Mr. Donnelly's name was called he said: Mr. President, I desire to explain my vote. When this matter first came up in this Convention, with a view to saving the people their right to vote for the important officials of the government, I introduced a bill in this Convention for the election of the Governor, Lieutenant-Governor, Comptroller and Attorney-General, feeling that the functions of government residing in those positions were of so great importance that they should be preserved to the people. My support of the short ballot in introducing that bill and my support of the short ballot in the Committee on Governor and Other State Officers of which I was a member, was with a view to wiping out other officers, such as the State Engineer and Treasurer, from the ballot because of the simplicity of the functions exercised by those officials, and feeling that they might properly be appointed. I have an entirely different reason from that of many of the supporters of the short ballot, for voting in favor of it. I do not believe in centralization of power. I believe in the Democratic idea of decentralization, and it was because of that, with a view to saving these offices for the people, that I introduced the bill and voted for the short ballot. I vote Aye.

When Mr. Dooling's name was called he said: Mr. President, I desire to be excused from voting and will explain my vote. I favor the provision of this measure in relation to the reorganization of the departments of State government. I am opposed to the short ballot proposition because I think that it is a reflection upon the intelligence of the electors of this State. Such power as they now possess, they are unwilling to surrender, and any

attempt on the part of the delegates to this Convention to take away that power from them will be resented. I vote No.

When Mr. Dunlap's name was called he said: Mr. President, I heartily endorse the first part of the bill consolidating the various departments under these heads. I think that is a great step in advance, but I do not believe in the principle of appointing so many State officers with such large powers. I believe the bill as a whole is very much better than the present conditions and I therefore vote Aye.

When Mr. Green's name was called he said: Mr. President, I ask to be excused from voting and will briefly state my reasons: I listened attentively to the voice of our illustrious President in his great oration of Monday last, when he said: "If there is faith in parties, if there is ever to be a party platform put out again, to which a man can subscribe or for which he can vote without a sense of futility, without a sense of being engaged in a confidence game; if all the declarations of principle by political parties are not to be regarded as false pretense, as humbug, as a parcel of lies, we must stand by the principles upon which we were all elected to this Convention." I wish to declare that I gave no advance pledge whatever concerning this subject. Repeatedly I was asked for a pledge in advance on questions likely to come before this Convention, and as often refused to give any promise other than to endeavor to do my duty as I saw it toward my constituents and the State. It seems to me that a delegate coming to this Convention ought not in advance to have bound himself by any pledge other than after fullest investigation and thorough deliberation in the Convention he would vote as he then believed would be best for the people. I have not been surprised to note how the short ballot association used the pledges given in advance by the majority of delegates in order to whip them in line or keep them there. This was not "invisible government," it was quite visible. I would rather do what I believe is best for the people "back home," especially when in keeping with their opinions, than help put up a "confidence game" and attempt to "humbug" the people and myself into the delusion that 970, more or less, self-appointed political delegates to unofficial conventions had the right to construct a platform binding the hundreds of thousands of equally as good Republican electors to a policy never approved by them. If the Republican party has been controlled for upwards of forty years by "invisible government" and "party bosses," then its platforms have been created by the hands of the same invisible workmen. Until I can be assured that "invisible government" is not being given a stranglehold upon the people when their rights are taken from them to vote as they

please for as many or more State officers as they have in the past, I shall profit by the open declaration of the honored President to the delegates of this Convention: "We must vote according to our consciences. We are not bound,—no legislative body is bound legally by a platform." If we are bound by the promises or platforms more or less invisibly made — we would not vote for this proposed amendment, which is by no means the thoroughbred "short ballot" to which the pledged-in-advance delegates were bound. This is a mongrel cur — product of dicker and barter — in which Kings surrendered principle for pelf, patronage and elective place on the ticket for Comptroller which was not in the original Proposed Amendment — and this is not the first illustration where Kingly rule has attempted to throttle the rule of the people. The only "pure sarsaparilla" brand of short ballot was the Proposed Amendment No. 484, Introductory No. 472, introduced June 8th, by my distinguished associate delegate from the 39th district, Hon. Israel T. Deyo of Binghamton, which permitted the election by the people of only the Governor and Lieutenant-Governor — balance of State officers to be appointed by the Governor. That is the bill you, gentlemen of the majority, should be supporting if true to your pre-conviction pledges and to the principle of the short ballot, since it is the only bill sanctioned by the "New York Short Ballot Organization" of No. 384 Fourth avenue, New York city, and exactly mirrors the one prescribed by the self-appointed, or invisibly called "Conference of Republicans held at the Hotel Waldorf Astoria, December 5, 1913." I am, therefore, standing squarely by the principles upon which I was elected to this Convention when, with pride of conviction and unalterable confidence in the people — instead of such "invisible government" as may be more easily supplied through the short ballot by combinations of corporate interests and big business, with big politicians.

The President — The gentleman's time has expired.

Mr. Green — I vote No.

When Mr. Griffin's name was called he said: Mr. President, I beg to be excused from voting long enough to express my reasons. I believe that the short ballot reform, as it is called, has come too late. When the Democratic Legislature of 1913 put upon the statute books of this State the direct primary law, thus consummating and bringing to its culmination the ambition of Governor Hughes which he was unable to carry out with Republican legislatures, I believe then, when the direct primary bill was passed, bossism and invisible government received their death blow. What do the people mean when they say "We want direct primaries"? They mean that they want to participate in party government. I

would show you from the figures, if I had the time, but they are available to you as well as to me, in the Red Book, that the people participated in the primaries in 1914; that thirty-three and one-third per cent of the voters took part in the primaries. The effect of last year's election shows decisively that the people at the polls can and will discriminate, and that the Massachusetts ballot and the direct primaries give us an opportunity to defy bossism and invisible government. So your short ballot is no remedy and I am against the bill upon that ground. I am against it on the further ground that you invest the Public Service Commissions with Constitutional standing and you divest the legislative body of this State of any control over the conduct of those bodies which exercise judicial and legislative functions. The President in his speech the other day made a very significant remark that the corporations fight fire with fire; that, when they are threatened with adverse legislation in the nature of strike bills, even wise men, and good men, otherwise, will attempt to go into the legislative halls and corrupt those bodies by the use of money. What do you propose to do by this bill? You intend to put all your eggs in one basket. You intend to narrow the sphere of corruption. The menace of public utility corporations is not the fact that they fear strike legislation, but it is the fear that they will try to get special legislation; and now you give them, by this bill, the power to get special legislation, because, instead of corrupting 150 or 200 men, they have only to corrupt five. I withdraw my request and vote No.

When Mr. Landreth's name was called he said: Mr. President, I desire to explain my vote. I am opposed to that portion of this bill which abolishes the long-established constitutional office of State Engineer and Surveyor and which places the aggregation of all engineering functions of the State government under a superintendent of public works without expressly requiring that he shall be an engineer. I desire to express in the strongest terms my disapproval of this radical change which I fear may prove to be a very serious and expensive one to the State. Nevertheless, in spite of this anomaly of placing strictly engineering functions of great importance and of enormous magnitude in the hands of a layman, I am so much in favor of the consolidation of departments and the simplification of the organization of the executive branch of the State government, which this amendment provides, that I shall support the measure. I vote Aye.

When Mr. Leggett's name was called he said: Mr. President, I desire to be excused from voting, and will briefly explain my reasons. I am unable to understand, in view of the conceded great benefits of the concentration of the various scattered offices

in a few departments, how anyone could refuse to vote for this measure on the extremely small shortening of the ballot. But there is another feature that has especially commended itself to my notice, and that is this: On the 21st of May I had the honor to introduce proposal No. 293, which has referred to the very committee which reported the bill on which we are now voting, which provided that on and after January 1, 1917, the advice and consent of the Senate should not be requisite to the validity of any appointment by the Governor, and all persons appointed to office thereafter by him should hold office at his pleasure. I was approached a few days later by the chairman of that committee who said to me that the committee would be willing to hear any argument I wished to offer at any time, but, in his opinion, it would be entirely useless; that the committee had formed their opinion on that and that they would not interfere with the long-established laws on that subject. It seems to me, that, as the old colored clergyman said, "The Sun do move," and I think this is one noble advance the Convention has made, and I am very glad to vote Aye.

When Mr. Low's name was called he said: Mr. President, I desire to be excused from voting, while I explain my vote. I have lived all my life in the United States, where the President of the United States has enjoyed always the powers that we propose to give, at last, to the Governor of the State of New York. For most of my life I have lived in cities where the Mayor of the city has enjoyed the same power of appointment and dismissal, which we now propose to give the Governor of the State of New York. During that period I have seen the government of cities constantly improved. What is much more to the point, I have seen the people of those cities acquire a control over their government which they never had before, never even approximated, and I believe the policy which is embodied in this bill will attain the same result in the State of New York as has obtained for over a century in the Nation and for the last thirty or forty years in the cities of Brooklyn and New York; and therefore I withdraw my excuse from voting and vote Aye.

When Mr. Mann's name was called he said: Mr. President, I ask to be excused from voting, and wish to say there are several discrepancies which I think I find in the proposed measure. For instance, in section 4: The heads of all departments and the members of all commissions, unless otherwise provided in this Constitution shall be appointed by the Governor and may be removed by him in his discretion. Then follows section 6, which states in substance, "All appointed heads of departments shall be subject to impeachment in the same manner as the governor." In other

words there are two methods of removal, and I think this may lead to confusion. That is one of the reasons why I get up to explain my vote. On the other hand, I believe that in the scheme contemplated in this short ballot proposal, it was understood that the Governor was to be elected for four years and that the heads of the departments and all those that were to be elected and appointed were to be elected and hold office for the same period. That has been changed, and the result now is that the change that was made last night in the term of the Governor had a far-reaching effect, inasmuch as it also curtails the term of office of all the others that were provided in the scheme of this short-ballot proposal. Furthermore, I believe that the great powers given to the superintendent of public works are such that it ought not to be given into the hands of one man who is appointed, and that those powers should be taken away from the people. It seems to me that that particular office ought to be elective. Ordinarily I would have been for the short ballot, and I really felt all the time that the advantages would outweigh the disadvantages, and I believe that even now the advantages that will accrue to the people of the State of New York by virtue of the short ballot will outweigh the disadvantages that I have called attention to and for that reason I vote Aye.

When Mr. Newburger's name was called he said: Mr. President, I believe in the principle of the short ballot. I do not believe in the principle of the shorter ballot. I believe this bill pretends to be something it is not. I feel that a compromise has been effected here to which I cannot subscribe. I vote No.

When Mr. Delancey Nicoll's name was called he said: Mr. President, I ask to be excused from voting and will briefly explain my reasons. I find myself, in the discussions on this amendment, and in the reports of the debate which appeared in several of the newspapers in the unenviable and ungracious position of having unduly criticised my brethren from the borough of Brooklyn; and, if in the excitement of the debate I have said anything which hurt their feelings, or wounded their pride I wish to recant and be forgiven, before it is too late. The head and front of their offending, as upon reflection I now see it, consists only in this: That is, in presenting to the Committee on Governor and Other State Officers and to the responsible management of the Convention the historical arguments in favor of retaining the comptroller as an elective officer with all the power that he has exercised for so many years. That is a subject upon which wise and patriotic men have differed for half a century, and if, as I believe they did, the delegates from Brooklyn believed in that argument, it was their right and their duty to present it. We, of Manhattan, are united to the delegates from the Borough of Brooklyn not only by four bridges

and eight tunnels, but also by the ties of friendship. As Saint Paul said, "They are men of like passions to ourselves." We breathe the same air; we eat the same food; we speak the same language, or, I may say, languages; and we worship the same God. We have the same virtues and vices, the same habits and customs, the same ideals, ideas, ambitions, and aspirations that they have. They perhaps are a little more astute than we are in politics. They wear better clothes and finer jewelry; but in all other respects they are bone of our bone and flesh of our flesh. I want to say now that no more attentive and industrious body has been in this Convention. I think I may safely say on the whole no body has exerted upon our councils a more wholesome and beneficent influence, and therefore I vote Aye.

When Mr. M. J. O'Brien's name was called he said: Mr. President, I have had little to say on this subject because it was very well presented by those who took part in the debate, but the question as it presented itself to my mind was a simple one. The people of this State demanded a reform in the matter of the administration of their affairs and it is conceded by every member, every delegate to this Convention, that it could be secured only by ending the irresponsible and scattered form in which our affairs were being administered. Therefore that feature of the reduction of one hundred and fifty odd departments to seventeen was a reform which everybody must commend. When we come to the other feature of the short ballot, so-called, we must remember that what we were all seeking was to have the will of the people expressed, which was that they were entitled to know who is responsible for the administration of their affairs, and when that question came up there was a division, on one side those who believe it could be secured by electing all of these executive and administrative officers. Others thought it was to be secured by having some one whom the people knew, whose qualifications they were familiar with, upon whom the responsibility should rest. I submit when a question of that character is presented, representing two great parties in this State, it must be and should be settled, and the members of it should be bound by the party councils. On the Democratic side that was settled for us in the manner which is expressed in this measure, which has been presented here for approval, and I withdraw my request and ask to be recorded in favor of the measure.

When Mr. Ostrander's name was called he said: Mr. President, I desire to explain my vote upon this short ballot proposition. The moose call of the hunter is never intended to benefit the moose. Full of the melody of companionship and love, calling with tenderness to happy communion, if it be heeded, it lures

the victim to certain death. So this political moose call, sent so cheerfully and resonantly reverberating over hill and dale, intended to call voters from far beyond the confines of our State to the bag of the hunter, is not designed for the benefit of those who listen. The moose call which is not alluring and deceptive is never successful, but it never intends anything for the good of the victim. The "Greeks bearing gifts" is a synonym. The friends of some men on this floor who are endeavoring to induce the people to give up a portion of the sovereignty which they have long enjoyed have no interests in common with ordinary folks. Instead of giving the people something, they are trying to "hand" them something. The men who declaim most loudly against the shades of dead bosses and invisible government were never heard to raise a voice against them in their lifetime, but mostly took their fees, did their bidding and received the benefit of their assistance with glad hearts. It ill became Solomon to cry "All is vanity and vexation of spirit" when he was old. It would have been more to his credit in his younger days while he was enjoying the things which he later decried. His repentance came too late. So these corporate defenders and contrivers love the people too late. I have finally come into the visible presence of financial and political authority, aristocracy — almost deity — have seen it in the flesh — have seen how the rattle of stage thunder is produced and am disillusioned.

"I remember, I remember the fir trees dark and high
I used to think their slender tops were close against the sky;
It was a childish ignorance, but now 'tis little joy
To know I'm farther off from Heaven than when I was a boy."

I am sorry that this birthright is being bartered away in the name of the Republican party. The voice is the voice of Jacob but the hand is the hairy, selfish, grasping hand of Esau. The people will spew out this dicker — it smells too much of the skyscraper. When the crafty hand of great interests, like the wolf in Little Red Riding Hood, silently seeks the throat of popular liberty, under the guise of friendship — I vote No.

When Mr. M. Saxe's name was called he said: Mr. President, I desire to explain my vote. It is a matter of considerable amusement to me to see a body having among its numbers a large number of practical politicians, stand in opposition to this measure, knowing as they do from their experience at State Conventions, from their experience, short as may be, with the direct primary, that even with that latter method the organization candidates are bound to succeed in the primary election. I say it is a matter of amazement to me that they had any opposition whatsoever to this measure. Now we all know, particularly those of us who have

gone to the State Conventions, that through a long number of years the tail of the ticket — and after all these officers that are now being taken away from the popular vote, that are to be selected by the Governor, are the tail of the ticket — that they have been selected in the hurry and bustle of a State Convention. Even now, in making up an organization ticket for a direct primary, they are selected for the purpose of producing the best results in the vote according to geography of the State. Now, why not face that proposition fairly and squarely? There is no real sense for the continued election of the officers at the tail of the State ticket. And even those who are extremely conservative in their notion of politics, it seems to me, must admit that we are doing nothing more than agreeing with that growth which Mr. Darwin has so well pointed out of the monkey losing his tail. Mr. President, I vote Aye.

When Mr. Shipman's name was called he said: Mr. President, I desire to explain my vote. This amendment has been urged with the assertion that it will promote efficiency and economy. A close consolidation of the various departments of government under a smaller number of State officials would produce efficiency, especially political efficiency, under the rule of the Governor who appoints them all. That is a matter beyond doubt. It will entrench an unscrupulous chief executive almost beyond measure and tend to make party power and rule enduring. But that it will produce economy I do not believe. It is an experiment which will be vastly more expensive than the present form of government. It will not reduce any of these boards and if it ever goes into effect the cost of its administration will mount by leaps and bounds and responsibility, promptness and efficiency will be acquired only at a larger expense. The question has been mooted again and again, that political results have been promised beyond measure for the benefit of good government. I am willing to have the experiment tried if good government results from it, although I believe it will be at a greater expense on the taxpayers. In the hope that efficiency may somehow outweigh the expense of it, I vote Aye.

When Mr. R. B. Smith's name was called he said: Mr. President, I wish to briefly explain my vote. With the provisions of this amendment which give to the Governor the unrestricted power of appointment and removal of appointed officers, so as to make his power commensurate with the responsibility which is imposed upon him by the people, I am in full accord with the consolidation and amalgamation of the different departments of the State as proposed — I am in the main in accord. I believe it will make for economy and effectiveness in administration

Those two features of this amendment constitute a distinct advance in reform in the government of this State. With the classification of elective and appointive officers, I cannot agree with the Proposed Amendment. Mr. President, I have supreme confidence in the ability of the electorate of this State to express an intelligent choice of the chief executive officer, and I believe they can be trusted to exercise that power at all times in the interest of good government. To take from the people the power to choose the Secretary of State, for reasons which I have heretofore indicated, I cannot agree. To fail to give to the people the power to choose the Superintendent of Public Works, with the enormous powers which you purpose to give him, I believe, constitutes a menace and a danger. Fearing that a vote on my part in favor of this Proposed Amendment would be construed as a lack of confidence in the people which I do not feel, I am constrained to vote in the negative.

When Mr. Tierney's name was called he said: Mr. President, with the principle involved in the consolidation of the administrative departments of the State I am in thorough accord. I regret that that principle is coupled with one so vicious as the short ballot or, as the compromise with expediency has made it, the shorter ballot. The evil of the shorter ballot to my mind so overbalances the merit of the consolidation of the departments that I desire to withdraw my excuse and I vote No.

When Mr. Unger's name was called he said: Mr. President, I am one of those who believe in making the punishment fit the crime, I therefore vote to consign to the tender mercies of a free-born people this bill which would sell their birthright for a mess of patronage. I therefore vote Aye.

When Mr. Westwood's name was called he said: Mr. President, I want to say a word to the distinguished delegates of this Convention. Of course, if the others listen, I cannot help that. During the time of the debates here, I have sat at your feet as Saul at Gamaliel's, and have listened enthralled and entranced with the charming way with which you have laid hold of secular and sacred history, of literature and mythology, to use as gems to embellish your arguments or as weapons to force home the logic of your contentions, and I have wondered whether or not my county might not supply something, somewhere, which would indicate the underlying truth that is presented in this bill. There was a man who lived for a short time in Fredonia, whom some of you knew, of whom all of you have heard, who spent his youth on the Mississippi. He immortalized a character he found at Dawson's Landing on the Missouri, Pudd'nhead Wilson, and he

perpetuated for the generations to come *Pudd'nhead Wilson's Almanac.* One of the sayings in that almanac was: "Behold, the fool saith, 'Put not all thine eggs in the one basket'— which is but a manner of saying, 'Scatter your money and your attention;' but the wise man saith, 'Put all your eggs in the one basket and Watch That Basket.'" It has been said here that the people of the State will have to be advised of this measure, will have to be educated along the lines that we have been thinking, in the discussion of it, and in its passage. I do not know what arguments will be presented to those who reside to the north of us here. I am certain that those of you whom I am addressing, and those of you who are listening, will have your own well chosen way of presenting the merits of this bill and the merits of our whole Constitution to the people when it comes forward; but I know for myself, at least, that the fellow townsmen of Mark Twain and those who lived in the same county with him will recognize the pith and force of the injunction to put all of their eggs in one basket, and watch that basket. I vote Aye.

When Mr. Whipple's name was called he said: Mr. President, I desire to be excused from voting because just once in the life of this convention I want to explain my vote. Undoubtedly all of them have been explained. I have heard so much reason and logic and argument about this bill that I am all mixed up. I felt that I could believe thoroughly in my friend, Brackett, and I felt equally, if not more so, that I could trust entirely the President of this Convention in his reasoning, and in fact, many men about here I felt perfectly willing to follow. I was disposed not to support this measure because I did not believe in the short ballot, and if I have any touch with the people of the State, the common people, I am inclined to believe that they don't believe in it so far as it takes away from them any right to elect an officer of the State, and I don't wonder at that, because they have been clamoring for years to vote direct for United States Senator and for the direct primary, so I cannot quite get around to it on that basis. If the purpose is not that, to take away from them this right, or any, that is not important but it is to concentrate authority, or rather, responsibility — well, I can't quite harmonize your idea with the non-concentration of responsibility in your nine-headed conservation commission. The thing is not logical as you hitch it up. Where the truth begins and the lie leaves off — the thing does not hitch. I cannot find where there is any logic in it. But I have thought that I knew something about at least one subject that I wanted the people to follow me in because I did know about it. I believe that the wise men about this circle know a great deal more about this than I do, and so to be logical myself I ought to

follow them, and I believe the consensus of opinion here is among the best of you, if I may say there are any who are better than others, that this thing ought to be done, and, yielding my own opinion about it and my ideas about its being illogical, I withdraw my excuse and vote Aye.

When Mr. Wiggins' name was called he said: Mr. President, I don't desire to explain my vote. I simply wish to rise to congratulate my friend and dear brother, Martin Saxe, upon the enthusiasm he displayed when he advocated the short ballot, and to assure him the memory of his speech has entirely obliterated from my mind the tears which about ten days ago I saw streaming down his face, and the remarks he made to me when the Tax Department was not as it is now. I vote No.

The President — One hundred and twenty-five votes have been cast in the affirmative; 30 in the negative. This proposed amendment having received the affirmative vote of a majority of the delegates elected to the Convention, is adopted. The Secretary will call the next order on the calendar.

The Secretary — Third reading No. 28, printed No. 853, from the Committee on Counties, Towns and Villages, etc.

The President — Is there any debate on the proposed amendment?

Mr. Rosch — Mr. President, I desire to speak briefly in relation to this proposed amendment. As I understand the proposed amendment offered by the Committee on County, Town and Village Government, it seems to empower the Legislature to permit the organization in any county of the State, any form of government which may be determined by the Legislature. It is more extreme than any provision of home rule that has been suggested in relation to any of the cities. It is, however, a proposed amendment to which I desire to call the attention of the Convention, that is to section No. 27, wherein it is intended to confer power upon the Legislature to transfer the control of the highways and the care of the poor fund from the town to the county government. There are a number of towns throughout the State which in recent years have raised money for the purpose of improved highway systems, and by this proposed amendment if the Legislature should transfer the control of those highways to the county officials it would be to the disadvantage of those towns which have incurred bonded indebtedness for the purpose of improving their highway system. In the rural communities the care of the poor is controlled principally by the officers of the poor of the town and the real aid which is given by towns to the poor of the communities is through what is termed the temporary aid, and under

this proposed amendment it is proposed to confer upon the Legislature power to take away from the towns this power, which I do not believe should be done.

Mr. Barrett — Mr. President, the answer to the question raised by Mr. Rosch is by reference to the four lines in section 27, page 2, "The Legislature may confer upon any elective or appointive county officer or officers any of the powers and duties now exercised by the towns, and any county or the officer or officers thereof, relating to highways, public safety and care of the poor." In his general reference to the first provision in the bill, to which he said he did not mean to make objection, but which he did not quote accurately, that first provision is to enable the counties that need it to adopt a different form of county government, more adapted to their needs than is now provided by the Constitution. Now, if a county does not prefer to proceed under that plan, but may want to have some relief on the three subjects mentioned in section 27, they may do it under this provision of the Constitution, if adopted, where it is now prevented. Now, the answer as I said, to his question, is this: That obviously no general law would be passed if the representatives from say 49 or 50 counties were opposed to it, so that it would have to be a special act, and a special act would not be passed if this were adopted, without the approval of the board of supervisors. So that I think that matter could be safely left to the Legislature that any county that did not want this particular bill put into effect would not have it imposed upon it. Now, as to the question of highways as I believe, no towns in a county would have their highways taken away from them and put under county control, if they did not wish it. Most of the highways are now under State supervision, as most of us know, but the town highways could not in any instance be taken away without the permission of their board of supervisors, and the same thing applies to the care of the poor: If a county finds it can better handle the proposition of the care of the poor as a county, than as a town proposition — and in my judgment that is the logical way to handle it — they should have an opportunity to do so. This provision is necessary for some of the larger counties, and the smaller counties are in no danger whatever from this provision. In the Committee of the Whole the question was asked in regard to one of these provisions: Would a board of supervisors ever approve a proposition to abolish themselves? I would say that is the very thing that happened in the county of Westchester when this proposition came up, to approve the substance of this bill, every member of the board voted on that proposition, although the leader of the minority told the board that it probably meant the abolishment of the board, and they voted for it unanimously.

I think there is no danger in this proposition at all, either under the general or special provisions, and there is much needed relief afforded by it to the larger counties.

Mr. Rosch — Mr. President, I desire to move that the amendment be recommitted to the Committee of the Whole with instructions to report forthwith amended by striking out the italicized lines 21 to 24 inclusive on page 2.

Mr. F. L. Young — I understood the President to rule a short time ago that at this point of third reading, amendments were not in order.

The President — That was the case when the debate had closed. In this case the bill is open for amendment, and open for debate.

Mr. F. L. Young — Mr. President, I trust the delegate will not press his amendment. It is quite clear that it is made under a misapprehension. There is nothing in this bill which permits the Legislature to take away from the townships any power that they now exercise, except upon the special request of the board of supervisors of the counties and that can only happen when some situation has occurred in some county of the State, where it is very plain.

Mr. Rosch — You say that power cannot be taken away except with the consent of the governing body of the county?

Mr. F. L. Young — That is correct.

Mr. Rosch — Well, now, I find that provision in section 26, but I don't find that in section 27.

Mr. Young — That is why I said you were under a misapprehension. You will see it applies not to Section 26 alone — to the whole scheme of county government and it is only by a special act, which act must be with the consent of the board of supervisors.

Mr. Rosch — Will the gentleman yield again? Here are three towns in a county which have established improved systems of highways; twelve towns in the county have not. The twelve towns have a majority in the board of supervisors. They can have the county official appointed to take charge of the whole town system of highways in the county and apply the money for highway purposes in the twelve towns in the county to the disadvantage of the three towns which have bonded themselves for an improved town system of highways, and the Legislature, at the request of the twelve supervisors, can pass the act. If you can remove that difficulty from my mind, I will be willing to withdraw my amendment.

Mr. F. L. Young — The delegate wholly overlooks the fact that the matter rests in the sound discretion of the Legislature and matters of adjustment of that kind can be taken care of

precisely as bonded indebtedness is taken care of. There is not the slightest danger in that. This matter was thoroughly discussed in Committee of the Whole and there was a perfect understanding about it; no opposition to it. I regret very much at this late date that the thought has come to some delegates that the smaller counties are going to be endangered in some way by the enactment of this proposal. There is nothing here for anybody to fear. It is a matter for the county to regulate and in some counties it will be taken advantage of. In your county it will not be taken advantage of for a good many years to come. A suggestion is made to me that a county cannot be endangered or compelled to act except by its own vote. I trust that the gentleman will withdraw his amendment.

The President — The question is upon the amendment. The Secretary will read.

The Secretary — On page 2, lines 21, 22, 23, 24, strike out the italicized matter.

The President — Those in favor of recommittal with instruction to amend and report as indicated forthwith will say Aye, contrary No. The Noes have it and the motion is lost. Is there any further debate on the bill?

The President — There being no further debate, debate is closed. The Secretary will read the text.

The Secretary — The Delegates of the People of the State of New York, in Convention assembled, do propose as follows: Section 26. Section 27.

The President — The Secretary will call the roll upon the final passage of the bill. All those in favor will answer Aye to their names. All those opposed will answer No.

Those who voted in the affirmative were: Adams, Ahearn, Aiken, Allen, F. C., Angell, Bannister, Barrett, Baumes, Bayes, Beach, Bell, Bernstein, Berri, Betts, Blauvelt, Brenner, Buxbaum, Clearwater, Clinton, Cobb, Coles, Cullinan, Curran, Dahm, Daly, Dennis, Deyo, Dick, Donnelly, Donovan, Dooling, Doughty, Dow, Drummond, Dunlap, Dunmore, Dykman, Eisner, Eppig, Fancher, Fobes, Fogarty, Foley, Ford, Franchot, Frank, Green, Griffin, Haffen, Harawitz, Heaton, Johnson, Jones, Landreth, Latson, Law, Leary, Leggett, Lincoln, Linde, Low, McKean, Mandeville, Mann, Martin, F., Martin, L. M., Marshall, Mathewson, Meigs, Newburger, Nicoll, D., Nixon, Nye, O'Brian, J. L., Olcott, Owen, Parker, Parmenter, Parsons, Pelletreau, Phillips, J. S., Phillips, S. K., Potter, Quigg, Reeves, Rhees, Rodenbeck, Ryan, Ryder, Sanders, Sargent, Schoonhut, Schurman, Sears, Sharpe, Sheehan, Shipman, Slevin, Smith, A. E., Smith,

E. N., Smith, R. B., Smith, T. F., Stanchfield, Standart, Steinbrink, Stimson, Stowell, Tierney, Tuck, Unger, Vanderlyn, Van Ness, Wadsworth, Wagner, Ward, Webber, C. A., Weber, R. E., Weed, Westwood, Wheeler, Whipple, White, C. J., Wickersham, Winslow, Wood, Young, C. H., Young, F. L., President.

Those who voted in the negative were: Austin, Barnes, Bockes, Bunce, Endres, Greff, Kirby, Lennox, Lindsay, Rosch, Saxe, J. G.

When Mr. Coles' name was called he said: Mr. President, I ask to be excused from voting and to briefly state my reason. The provision in Section 26 at lines 6, 7, 8, and 9, which provides that "no local or special bill relating to a county or counties except to a county or counties wholly included within a city shall be enacted except upon request by resolution of the governing body of the county or counties to be affected," is a provision which is not well devised to obtain the relief sought. Such a provision as this makes it necessary that the initiative shall be with the governing body of the county which may not want to be reformed, and it appears to me that no governing body would be likely to take the initiative in order to reform any defect, or to modify any defect in that governing body. In order to secure proper kind of legislation, there ought to be provided a suspensive veto, to which the initiative will be with the Legislature; that the governing body may be called upon to approve or disapprove of the proposed bill, and that after that action is taken by the governing body the bill should again be submitted to the Legislature or to the Governor, for signature, similar to the provision which obtains in regard to cities. With a county as populous as some counties and which join the large cities, I see no reason why there should not be the same provision for a suspensive veto as has been provided in the case of cities. But, in the main I regard the amendment as a good one, and, therefore, I withdraw my request to be excused from voting, and vote in the affirmative.

When Mr. Low's name was called he said — I ask to be excused from voting while I explain my vote. The protection given to the counties within the city of New York under this bill against special legislation, seems to me to be not what it should be. On the other hand, we have gained something for counties under the home rule bill, and I know that the importance of this measure to the other counties of the State is much greater than its advantages to the city of New York, or the counties within the city of New York. I therefore withdraw my request to be excused from voting, and I vote Aye.

The President — 128 votes have been cast in the affirmative and 11 votes in the negative. The Proposed Amendment having received the affirmative vote of a majority of all the members elected

to the Convention, it is declared adopted. The Secretary will read the title of the next amendment on the calendar.

The Secretary — No. 861, by the Committee on Legislative Powers, to amend generally article three of the Constitution following section nine, and to repeal sections 23 and 25 of such article.

The President — The amendment is before the Convention and open to debate under the rule.

The President — There being no debate, the Secretary will read the bill.

The Secretary — The Delegates of the People of the State of New York, in Convention assembled, do propose as follows: Section 1. Section 2.

The President — The Secretary will call the roll. All in favor will signify by answering Aye as their names are called. All those opposed, will answer No.

Those who voted in the affirmative were: Adams, Ahearn, Aiken, Allen, F. C., Angell, Austin, Bannister, Barnes, Barrett, Baumes, Bayes, Beach, Bell, Bernstein, Berri, Betts, Blauvelt, Bockes, Brenner, Bunce, Buxbaum, Clinton, Cobb, Coles, Cullinan, Curran, Dick, Donnelly, Dooling, Doughty, Dow, Drummond, Dunmore, Eisner, Endres, Eppig, Fancher, Fobes, Foley, Ford, Franchot, Frank, Green, Greff, Haffen, Hale, Harawitz, Heaton, Johnson, Jones, Kirby, Landreth, Latson, Law, Leary, Leggett, Lennox, Lincoln, Linde, Lindsay, Low, Mandeville, Mann, Marshall, Martin, F., Martin, L. M., Mathewson, Meigs, Newburger, Nicoll, D. Nixon, Nye, O'Brian, J. L. O'Brien, M. J., Quigg, Parker, Parmenter, Parsons, Pelletreau, Phillips, J. S., Phillips, S. K., Potter, Reeves, Rhees, Rodenbeck, Rosch, Ryan, Ryder, Sanders, Sargent, Saxe, J. G., Schoonhut, Schurman, Sears, Sharpe, Shipman, Slevin, Smith, E. N., Smith, R. B., Smith, T. F., Steinbrink, Stimson, Stowell, Tuck, Unger, Vanderlyn, Van Ness, Wadsworth, Wagner, Ward, Webber, C. A., Weed, Westwood, Wheeler, Whipple, White, C. J., Wickersham, Wiggins, Winslow, Wood, Young, C. H., Young, F. L., President.

The President — One hundred and twenty-three votes in the affirmative and none in the negative. The Proposed Amendment having received the affirmative vote of a majority of all the members elected to the Convention, it is declared adopted. The Secretary will read the title of the next amendment on the calendar.

Mr. T. F. Smith — I rise to a question of personal privilege.

The President — The gentleman will state his question.

Mr. T. F. Smith — I was unavoidably absent when the home rule amendment was passed, and I would like to have the record show that if I had been present I would have voted against it.

The President — The record will so show.

Mr. Wickersham — The hour of ten-thirty having arrived, Mr. President, I move that further call of the calendar be discontinued and the Convention do now adjourn.

The President — Will the gentleman withhold his motion?

Mr. Wickersham — Yes.

Mr. Rodenbeck — Mr. President, may I present this report of the Committee on Revision and Engrossment?

The Secretary — By Mr. Rodenbeck. From the Committee on Revision and Engrossment, to which was referred proposed amendment 864, introductory No. 407, introduced by Mr. Parsons; also proposed amendment, introduced by the Committee on Industrial Interests and Relations, No. 865, introductory No. 714; reports the same examined, found correct and properly engrossed.

The President — The question is upon agreeing to the report of the committee. All those in favor will say Aye. Contrary, No. The report is agreed to.

Mr. Wickersham — Mr. President, I renew my motion.

The President — It is moved that the Convention do now adjourn. All those in favor will say Aye. Contrary, No. The motion is carried and the Convention stands adjourned until ten o'clock to-morrow morning.

Whereupon, at 10:55 p. m., the Convention adjourned to meet Friday, September 3rd, 1915, at 10:00 a. m.

FRIDAY, SEPTEMBER 3, 1915

The President — The Convention will please be in order. Prayer will be offered by the Rev. Edward R. James.

The Rev. Mr. James — Almighty God, whose we are and with whom it is our privilege and duty to work in behalf of Thy Kingdom, which is righteousness and peace and joy in holiness of spirit, grant unto the members of this Convention the spirit of wisdom, justice and truth, the spirit of that great Servant of all who came not to be ministered unto but to minister and to give His life for us. So guide and influence them in their deliberations and their work that what is here done may make for purer government, for the welfare and progress of our government, in Christ's name, Amen.

The President — Are there any amendments to be proposed to the Journal as printed and distributed?

Mr. Wickersham — Mr. President, I suggest the absence of a quorum and ask that the roll be called.

The President — The Secretary will call the roll.

Upon the call of the roll the following delegates responded: Messrs. Adams, Aiken, Angell, Austin, Baldwin, Bannister, Barrett, Baumes, Bayes, Beach, Bell, Bernstein, Berri, Betts, Blauvelt, Bockes, Brackett, Brenner, Bunce, Buxbaum, Byrne, Clearwater, Clinton, Cobb, Coles, Cullinan, Dahm, Daly, Dennis, Deyo, Dick, Donovan, Dooling, Doughty, Dow, Drummond, Dunlap, Dunmore, Dykman, Eggleston, Endres, Fancher, Fobes, Fogarty, Foley, Ford, Franchot, Frank, Greff, Griffin, Hagen, Hale, Heaton, Hinman, Johnson, Jones, Kirby, Landreth, Latson, Law, Leary, Leggett, Lennox, Lincoln, Linde, Lindsay, Low, Mandeville, Mann, Martin, L. M., Marshall, Mathewson, Mealey, Meigs, Mereness, Newburger, Nicoll, C., Nixon, Nye, O'Brian, J. L., O'Brien, M. J., Ostrander, Owen, Parker, Parmenter, Parsons, Pelletreau, Phillips, S. K., Potter, Quigg, Reeves, Rhees, Rodenbeck, Ryan, Ryder, Sanders, Sargent, Saxe, J. G., Schoonhut, Schurman, Sears, Sharpe, Sheehan, Shipman, Slevin, Smith, E. N., Smith, R. B., Smith, T. F., Standart, Steinbrink, Stimson, Stowell, Tuck, Vanderlyn, Van Ness, Wadsworth, Wafer, Ward, Waterman, Webber, C. A., Weber, R. E., Weed, Westwood, Whipple, White, C. J., Wickersham, Wiggins, Williams, Winslow, Wood, Young, C. H., Young, F. L., President.

The President — One hundred and thirty-three delegates having answered to their names, a quorum of the Convention is present.

The President — There being no amendments to the Journal as printed and distributed, the Journal stands approved. Presentation of memorials and petitions. The Chair lays before the Convention a telegram from Paul D. Cravath, chairman of the Tenement House Committee of the New York Charities Organization Society, which will be referred to the Committee on Cities. Communications from the Governor and other State officers. Notices, motions and resolutions. The Secretary will call the roll of districts.

Mr. Foley — I offer the following resolution.

The Secretary — By Mr. Foley: Resolved, That the Secretary of State be respectfully requested to submit at his earliest convenience the results of the last enumeration taken in the months of May and June of the number of inhabitants of the State by counties, and if said enumeration be not complete, that he be requested to transmit so much thereof as is now available.

Mr. Foley — In view of the speedy disposition of the Convention's business and after consulting with the Chairman of the Committee and Mr. Wickersham, I ask for the immediate consideration of this resolution.

The President — Is there any objection to the immediate consideration of the resolution offered by Mr. Foley? The Chair

hears none and the resolution is before the Convention. All in favor of the resolution will say Aye, contrary No. The resolution is agreed to.

Mr. E. N. Smith — As I understand it, it calls for the inhabitants, and not the inhabitants excluding aliens as a basis of apportionment.

Mr. Foley — The call is for information, and I assume the Secretary of State will send us what he has.

The President — The Secretary will proceed with the call of the roll of districts.

Mr. Wickersham — I offer the following resolution and ask unanimous consent for its immediate consideration.

The President — The Secretary will report the resolution.

The Secretary — By Mr. Wickersham: Resolved, That a special committee of seven, besides the President as member ex officio, be appointed by the President to prepare and report to the Convention the draft of an address to the people respecting the proposed new Constitution and amendments. Further Resolved, That a select committee of five, besides the President as member ex officio, be appointed by the President to prepare and report to the Convention a resolution fixing the time and manner of the submission of the proposed Constitution and amendments to the votes of the electors of the State.

The President — Is there any objection to the present consideration of the resolution? The Chair hears none. The resolution is before the Convention and open to debate. All in favor say Aye, contrary No. The resolution is agreed to.

Mr. Clearwater — I offer the following resolution and move its adoption.

The President — The Secretary will report the resolution.

The Secretary — By Mr. Clearwater: Resolved, That the Secretary of the Convention confer with and procure from the Secretary of State to furnish to the members of the Convention a suitable certificate of their election as delegates and that the expense of procuring and furnishing the same be paid from the moneys appropriated for the expenses of the Convention.

The President — In the usual course of business, the resolution will be referred to the Committee on Contingent Expenses.

Mr. Clearwater — I will ask unanimous consent for its immediate consideration.

The President — Mr. Clearwater asks unanimous consent for the immediate consideration of the resolution which he has offered.

Mr. Deyo — I will have to object to that, Mr. President.

The President — Objection is made.

Mr. Wickersham — Mr. President, may I ask that it be referred to the Committee on Contingent Expenses?

The President — Further consideration being objected to, it will be laid over under the rule, or be referred.

Mr. Wickersham — I move that the resolution be referred to the Committee on Contingent Expenses.

The President — It is moved that the resolution be referred to the Committee on Contingent Expenses. All in favor of the reference will say Aye, opposed No. The motion is agreed to, and it will be referred to the Committee on Contingent Expenses. The Secretary will proceed with the call.

The President — Reports of standing committees.

Mr. J. L. O'Brian — The Committee on Rules recommends the adoption of the following special rule, and I move its adoption.

The Secretary — Mr. J. L. O'Brian from the Committee on Rules submits the following report by resolution: Resolved, That Special Order No. 69, in reference to the Canal Board, be made a special order for consideration immediately following the order now pending, with a time limit of one-half hour, individual speeches ten minutes each. Resolved, That the following matter be made a special order for consideration, at the conclusion of the present calendar of special orders, namely: General Order No. 60, eligibility of sheriff and removal of county officers, time limit of one hour, speeches of individual members ten minutes each; General Order No. 68, delegation of power to regulate height of buildings, time limit one hour, speeches of individual members ten minutes each.

The President — All in favor of the resolution will say Aye, contrary No. The resolution is agreed to. Further reports of standing committees. Reports of select committees. Third reading.

Mr. Wickersham — Mr. President, I move that the third reading calendar be postponed until after the morning recess, and until 2:30 to-day, and that we proceed with the general orders in special orders.

The President — All in favor of the motion will say Aye, contrary No. The motion is agreed to. The Convention will go into the Committee of the Whole for the consideration of the pending special order. Mr. Sears will be good enough to resume the Chair.

(Mr. Sears takes the Chair.)

The Chairman — The Convention is now in Committee of the Whole for consideration of the special order which is General Order No. 67. We are considering the second section.

Mr. E. N. Smith — Mr. Chairman, I offer the following amendment.

The Chairman — The Secretary will read the amendment.

The Secretary — On page 11, in line 24, strike out the word "now" and insert after the word "organized" on line 25, the words "on the first day of January, one thousand eight hundred and ninety-five".

Mr. E. N. Smith — The purpose of this amendment is manifest. The present Constitution reads, "no two counties or the territory thereof as now organized." The "now" therefore refers of course to the date of going into effect of the Constitution adopted in 1894, and if left in the Constitution to be adopted here it would change the date so as to refer — the "now" would refer to this date which would effect a radical change in the situation, on account of the fact that the county of the Bronx was carved out of the county of New York after 1895; the purpose of this amendment is simply to make a correction so as to leave the apportionment plan just as it was adopted in the Convention of 1894, and I want that amendment considered in connection with the other proposed amendments which I have offered.

Mr. Marshall — I disagree with the interpretation given to the word "now" by the gentleman from Jefferson county. The Constitution which we are now adopting will speak as of the first of January, 1916, in accordance with the terms of Article XV, which we adopted yesterday. I call attention to the decision of the Court of Appeals upon a similar proposition as applied to the use of the word "heretofore", to be found in the second section of Article I of the Constitution in the well-known case of Wynehamer against the People, 13 New York, page 378. It was there decided that the word "heretofore" in that clause of the Constitution of 1846, which related to the inviolability of the right of trial by jury, it was held to refer to cases in which right existed before 1846 and not merely before 1777, although "heretofore" was used in the Constitution of 1777. In like manner "now" if used in this article will refer to the time of the adoption of the new Constitution. We will create confusion if we are not careful in the use of our language. If we mean to change the present provision then it will be necessary to adopt this amendment, otherwise there is no means to refer to a date.

Mr. Wickersham — That is precisely what Mr. Smith's amendment, as I understand it, is designed to meet. He wishes to avoid the effect of using the word "now" in the new Constitution. He desires to avoid having the provision refer to the adoption of the present Constitution, because since then the change in the county of the Bronx, the erection of the county of the Bronx out of a portion of the county of Manhattan would introduce a factor disturbing the ratio.

Mr. Marshall — If he desires to change the rule set forth in the Constitution, so that " now " shall not refer to the present time, but to a previous date another question is presented.

Mr. Wickersham — It means exactly what you suggest.

Mr. E. N. Smith — The purpose of the amendment to the bill is that the method of apportionment may be preserved as established in the Constitution of 1894.

Mr. J. G. Saxe — I fully understand the meaning of your amendment, so far as it relates to the later sections of your bill, but will you please explain to the Committee of the Whole the need of your amendment to Section 2? Isn't the language proposed by Mr. Brackett's committee of Section 2, better than the language you propose? The section before the House now is Section 2. I don't see the need of your language, Section 2, and I wish you would explain.

The Chairman — The Chair would like to inquire whether the amendment just sent to the desk was to Section 2?

Mr. E. N. Smith — It was simply a part of my complete proposal of the amendment of this bill in order to restore the provisions of the bill to the wording of the Constitution as it now is, and it relates to Section 4.

The Chairman — The House is now considering Section 2, although the Chair has ruled that in order that the House may have before it the entire subject, the entire amendment should be read; but the matter before the Committee now is the consideration of Section 2.

Mr. J. G. Saxe — Mr. Chairman, there are two amendments pending to Section 2, one by Mr. Haffen of the Bronx, to change the membership from 150 to 153 members; and so that we may understand just what Mr. Smith's amendment to Section 2 is, I ask that it be read again, the amendment to Section 2.

The Chairman — The Secretary will read Mr. Haffen's amendment to Section 2 and then Mr. Smith's and then an amendment which has been sent to the desk by Mr. Buxbaum, so that we may have before us the whole subject of Section 2.

Mr. Wickersham — Mr. Smith's was the first one offered to Section 2. I ask that they be read in their order.

The Chairman — Mr. Haffen's was the first, and then Mr. Smith's. The Secretary will read Mr. Haffen's amendment, so far as it relates to Section 2.

The Secretary — On page 1, line 9, between the word " fifty " and the word " members ", insert the word " three ", making the sentence read " The Assembly shall consist of one hundred and fifty-three members, who shall be chosen for one year."

The Chairman — Now the Secretary will read from Mr. Smith's amendment so far as that relates to Section 2.

The Secretary — On page 1, line 5, strike out the words " fifty-one " and insert the word " fifty " and strike out the bracket in line six, inserting the bracket after the period. In line 8, strike out the word " who " and insert in place thereof the word " they ".

The Chairman — Now the Secretary will read Mr. Buxbaum's amendment.

Mr. Buxbaum — May I suggest, Mr. President, it refers to Section 4. Inasmuch as we are now considering Section 2, we may have that later.

The Chairman — It may be held then until we come to Section 4.

Mr. Quigg — Mr. Chairman, adopting the language that has been used by every committee and the members of every committee that has brought in a bill here, I want to say that the Committee on Legislative Organization has given careful, elaborate, hourly, daily consideration, and prayerful thought to this bill. We have not changed anything. It is all the way it is now. If you adopt the amendment as the Committee has given it to you, you will adopt existing law, the existing Constitution, and you will be safe; for we have gone over every word and every line. Now, what Mr. Haffen wants to do is dangerous, in the minds of the Committee, in that it adds to the numbers of the Legislature by even so many as two members or three. The feeling of the Committee was that the Legislature is too large as it is; that if we had dared to bring in a proposition to reduce the number of Senators and the number of Assemblymen, we would have done it; that it is much the best for us to keep things as they are, and that is what the Committee has done. Now, if you go to tinkering with it, in view of our experience in the Committee in trying to reconcile paragraph to paragraph, to paragraph after paragraph, it is very certain that the Convention will get into trouble, for a whole lot of things will have to be changed. Now, we have no feeling about it. There is no pride of opinion in the Committee; certainly not on the part of the chairman, Mr. Brackett; certainly not on the part of myself, and I feel sure I can speak for every member of the Committee — only we warn you that if you make these changes suggested by Mr. Haffen, suggested by Mr. Smith, you will have to fuss with this article from now until Sunday morning, whereas if you take what the Committee has done —

Mr. D. Nicoll — Does the gentleman think it would be dangerous to make any amendment to it at all?

Mr. Quigg — I believe so. I believe if you take it just as it is, you will have the existing situation.

Mr. D. Nicoll — You would not touch it at all?

Mr. Quigg — I would not; but I am ready to listen to anything, of course. If you leave it just as it is —

Mr. Baldwin — Mr. Quigg, what do you mean by "leaving it just as it is" the section itself, or the rule as to apportionment?

Mr. Quigg — I mean the rule of apportionment.

Mr. Baldwin — This makes no rule at all.

Mr. Quigg — No.

Mr. Baldwin — How about the five counties' representation?

Mr. Quigg — The same thing that it is now. It says that New York city as now organized shall have no more than — shall not have a majority in the Senate. That is all.

Mr. Wagner — Mr. Chairman, there are five counties in New York. This limits any two counties to not more than one-half — that is the old rule. Now, you propose to include the other three.

Mr. Quigg — It means New York city — yes, Mr. Wagner, it means New York city. Now that point, I will admit is the real controversy here; nothing else. If the Convention will take what the Committee has done and then confine its controversy and debate to the subject of whether New York city as now composed shall have more than a majority of the Senate, it will get to the kernel of the situation at once. If it goes into Mr. Smith's amendment, or Mr. Haffen's, it is going to have work on its hand, which as I say, will occupy it, might reasonably occupy it, for a week. As to the point that Senator Wagner has raised, that is the whole matter, and if we stay right there, we can finish our work very shortly.

Mr. Haffen — I desire simply to answer Mr. Quigg. In relation to the increase from 150 to 153, I am perfectly willing to have it remain at 150. That will mean that there will be another assemblyman taken from some of the upper counties. Queens will receive an additional member because of the fact that there was a mistake made in the figures of 60,000, and consequently it means that there will be a reduction of one in one of the upper counties, in addition to six or seven reductions at the present time, owing to the fact of this number, 150. The increase has been in the lower tier, especially in New York, the five counties of New York. There has been a decrease up state. Now, this increase to 153 is in the interest of some of the upper counties and not in ours, and consequently I am perfectly satisfied to have it remain at 150.

Mr. J. G. Saxe — Mr. Chairman, I want to confine myself

directly to the question before the house. The old section consisted of six lines and only provided for 50 senators, whereas today we have 51; and if you want to find that extra senator, you have to look through the whole article to get that extra senator. Now, the Committee has done an excellent piece of revision. So far as the Smith amendment is concerned, I think that is wrong. Here is the way the Committee says Section 2 shall read: "The Senate shall consist of fifty-one members who shall be chosen for two years. The assembly shall consist of one hundred and fifty members who shall be chosen for one year". Mr. E. N. Smith suggests that we put back four lines, one of them referring to the year 1895, and one referring to fifty members instead of fifty-one, and leave it to be corrected in some other section, and I want to say as between the Committee and Mr. Smith's amendment, it seems that Mr. Brackett's Committee is absolutely and clearly right, and right beyond dispute. Now, Mr. Haffen's amendment stands in a different position altogether. He suggests we shall change a matter of substance, our membership in the assembly from one hundred and fifty to a hundred and fifty-three. Mr. Haffen is pretty good at figures and knows a good deal about the subject, and personally I am very much inclined to follow his judgment on the question of numbers; but the point I want to make is that the difference between Mr. Brackett's Committee and Mr. Smith's is wholly a question of the English language, whereas the issue between Mr. Brackett's Committee and Mr. Haffen's is a question of substance, whether we shall have 150 or 153 assemblymen.

Mr. E. N. Smith — I cannot agree with Mr. Saxe that this is merely a matter of the English language. This present apportionment plan is a complete entity in itself, and you cannot disturb any part of it without throwing the whole plan out of balance. Section 2 provides that "the Senate shall consist of fifty members, except as hereinafter provided". Now the "hereinafter provided" is in Section 4, which provides that "The Senate shall always be composed of fifty members except that if any county having more than three or more Senators at the time of any apportionment shall be entitled on such ratio, to an additional senator, or senators, such additional senator, or senators, shall be given to such county in addition to the fifty senators and the whole number of senators shall be increased to that extent". In this instance it is proposed by the Committee to strike out what I have read so that the number of senators would remain fixed at 51 and there would be no opportunity for progression or increase as contained in the plan of 1894. But that is not all. Paragraph 3 of Section 4 says that the ratio for apportioning senators shall

always be obtained by dividing the number of inhabitants, excluding aliens, by fifty. As I propose it, we leave the situation just as it is. We have the same number of senators we have now, for the reason that the bill on page 10, lines 12 and 13, provides that "The senate districts shall remain as at present constituted until altered as hereinafter provided".

Mr. Wagner — Your proposition, as I understand it, is that the next apportionment by the Legislature will reduce the number of senators from 51 to 50?

Mr. E. N. Smith — It is not.

Mr. Wagner — If you provide in the Constitution that there shall only be 50 senators — I am just informed what your proposition is; I understand it now.

Mr. E. N. Smith — You can see that the provision in reference to the number of senators is not fixed at 50 at all. The bill provides for 50 and the provision "except as hereinafter provided" allows for increasing the number of senators according to the conditions in counties having three or more senators at the time of any apportionment which are entitled to an additional senator or senators. The whole meaning of Section 2, leaving the number of senators at 50, except as hereinafter provided, must be read in connection with the other provisions of the Constitution.

Mr. Bernstein — I believe that the gentleman from Columbia has stated the situation with exact precision. The work of the Committee in framing this article was simply to bring the article down to the present time. There is not a question that can be raised here — that should be raised here in relation to this article other than the limitation that it is intended to place upon the five counties constituting the city of New York. Mr. Chairman, since this Convention met I have consistently supported the measures that have been adopted here. I supported them not alone because I believed they were right but because I felt they represented the fixed policy and the deliberate, intelligent judgment of the leaders of this Convention who have been charged with the duty of submitting to the people a Constitution that they would accept. Following that theory, I supported the Home Rule Bill, the Judiciary Article and the Short Ballot Article. I expected right along that the leaders of this Convention had a sincere desire to put out a Constitution that could be sincerely supported by every man in this State, whether he be a Democrat or a Republican. And so it is a sad reflection to me, Mr. Chairman, at this late hour of our proceedings to find that this proposal has been put forth in a form which is intended to make political capital for the party that dominates this Convention. I have heard the argument advanced before that the idea is that it is intended to provide that the city of New

York shall not be permitted at any time to control the rest of the State.

Mr. Quigg — That is the only point in the bill, is it not?

Mr. Bernstein — Exactly.

Mr. Quigg — And you agree with me that the Committee must either take our bill as we have presented it, as a whole, or it must reject it as a whole, unless it is going to revise almost every paragraph in the bill?

Mr. Bernstein — No, I do not.

Mr. Quigg — Except as to that point?

Mr. Bernstein — No, with the exception of the limitation which is contained in Section 4.

Mr. Quigg — That is the only point?

Mr. Bernstein — That is the only point worth while discussing.

Mr. Byrne — I rise to a point of information. Are we discussing Section 4 at this time or Section 2?

The Chairman — The Chair will state that we are discussing Section 2.

Mr. Byrne — We are all waiting for Section 4 if it is coming.

The Chairman — Section 2 is the subject before the Committee.

Mr. Bernstein — I am making the point that there isn't anything in Section 2 that requires the attention of this body for an instant.

The Chairman — If that is so, we will proceed to a vote upon Section 2.

Mr. Bernstein — I reserve the right to put my remarks on the Record, in relation to Section 4.

Mr. Sheehan — While the vote is going to be taken on Section 2, I assume that the whole subject matter of this proposition is before the body now, and that, therefore, the whole question may be discussed at the present moment. Necessarily that must be so, because we have been limited to two hours on the general discussion of this proposition, and how are we to discuss the question intelligently unless we discuss it as an entirety? It has been well stated by Mr. Quigg and Mr. Bernstein that there is really but one question here and what is the use of fooling ourselves and taking up the time of this Convention? The simple proposition that is involved is whether or not the existing constitutional prohibition against two counties having more than a majority shall continue or whether we are going to provide, in effect, that the constitutional provision shall also apply to Queens and Richmond. That is all there is to this question.

Mr. Wickersham — Mr. Chairman, will the gentleman yield? That is presented by the report of the Committee and when we

come to Section 4 that will be squarely before the House. Of course, it is involved in the general question.

Mr. Quigg — There is only one other thing. It is quite true that, unless we adopt Mr. Haffen's amendment, some of our counties up the State will have to yield a little to New York city on the Assembly. Well, we have got to do it. There are more people other than aliens, and we have got to do it, and we have done it by keeping things just as they are. Except for those two questions, whether the Republicans in the Convention are willing to yield anything up the State in the Assembly, which they must do, unless they are going to make the Assembly unwieldy, and the question of the Senate. Those are the only questions presented in this bill.

Mr. R. B. Smith — May I explain what this does? One proposition before this House is to reduce the number of Senators from 51 to 50. From the unofficial figures given, the ratio of apportionment on 51 Senators is 156,000; the ratio on 50 Senators is 159,000. Under either proposition Greater New York gets 24 Senators. If you reduce from 51 to 50, you take the other Senator from up the State. On the proposition of whether you increase the members of Assembly from 150 to 153, the ratio is changed from 79,000 on 150 members to 78,000 on 153, and from the unofficial figures it does not change the membership of a single county in this State.

Mr. E. N. Smith — Have you got the official figures showing what the number of inhabitants, excluding aliens —

Mr. R. B. Smith — I have got it as near as any one.

Mr. E. N. Smith — Then it is only an estimate?

Mr. R. B. Smith — It is only an estimate, but there are three counties, Steuben, Ulster and Richmond, which are so close to the ratio that it will take the official figures to determine whether they have two members or one.

Mr. Haffen — Doesn't it give an additional Assemblyman to Queens?

Mr. R. B. Smith — Yes.

Mr. Haffen — It does. I am perfectly willing to withdraw my amendment.

Mr. E. N. Smith — Mr. R. B. Smith said that the effect of my proposal was to reduce the number of Senators from 51 to 50. The effect of my amendment is no such thing. We have 51 Senators under the Constitution as it is and if the Constitution is left as it is we have 51 Senators still.

Mr. Brackett — It was the very unanimous and very earnest opinion of the Committee — Mr. Chairman, there is so much noise I cannot speak.

The Chairman — The Committee will come to order.

Mr. Brackett — It was the very unanimous and very earnest opinion of the Committee, both of Democrats and of Republicans, that under no circumstances or conditions should the number of legislators in either House be increased. If possible, I think that the opinion is the more earnest on the part of the minority report in the presentation to the Committee by Mr. A. E. Smith, than even on the part of the majority. The evil of increasing the volume of either House was fully considered and it was deemed of vital importance that under no circumstances should there be any conditions left in the instrument which should increase the Senate above 51 or the Assembly above 150. In the struggle to try to mitigate a little of what was regarded by the Democrats as perhaps an injustice, that they were limited in their representation from New York, we tried to find a way by which adding a few members to the Assembly would mitigate that trouble and would soften the sharpness of feeling that there was an injustice there. But Mr. A. E. Smith, with what I believe is a devotion to duty which he has exhibited during the entire Convention, says that even for partisan purposes he did not believe that the good of the State would permit the size of the Assembly to be increased. He could not have more directly voiced my individual sentiments than by precisely those words. If it were possible, Mr. Chairman, without throwing out of gear the system over the whole State; if it were possible without disorganizing the organizations that have been existing for years and that have grown up and have made their acquaintances and their alliances under the present system; if it could be done without doing that, the Committee would very surely have voted in favor of the reduction of the number of members of each House. But, considering the existing order and the traditions connected with it and the alliances and acquaintances that have been made in reliance upon that order, we finally concluded that it was not desirable to decrease and we did not report any decrease. At the same time, it was the intention of the Committee that under no circumstances or conditions should there be any increase in the membership of either House. The gentleman from Jefferson says that his proposal does not reduce the membership of the Senate from 51 to 50. Accepting his statement — and I think on a very careful parsing of the situation he is right — it then comes that, for the purpose of keeping the representation at 50, he adopts very circuitous language instead of the direct language presented in the report of the Committee. His language, to reach the result of 51 members, is this: It says that the Senate shall consist of 50 members until altered as hereinafter provided and then comes an addition by which, under certain conditions, an increase to 51 is permitted. It is by that process of circuity that

he reaches the present 51. We have preferred the direct method of saying that the membership of the Senate shall be 51. I have in mind — I believe fully with as much care as the gentleman from Jefferson has exercised — the thought that he has, but I think that it has been fully covered by the language which has been presented. The question, therefore, with respect to Section 2 is, and is only, as to whether it is desired that the membership of the Senate shall remain at 51, and of the Assembly at 150. If it is so desired, no more direct language than that employed in the report can be formulated; if it is not so desired, then the pleasure of the Committee is of course to be exercised as to the number that is desired.

The Chairman — The amendment offered by Mr. Haffen has been withdrawn. Are you ready to vote on the question of the amendment offered by Mr. Smith?

Mr. J. L. O'Brian — I supposed when we discussed this matter some months ago, although we did not at that time go into the details of this matter, that there was a tacit understanding that we had decided to leave matters very much as they are. In my opinion that is accomplished by the Smith amendment. The Smith amendment does not decrease the number of Senators. The Smith amendment leaves the Constitution just as it read before, and with the new provision on page 10, submitted by the Committee to the effect that the Senate districts shall remain as at present constituted until altered as hereinafter provided, we have the same situation resulting. The only difference that I see is that under the proposal of the Committee the divisor in determining the ratio would be 51 instead of 50, the present divisor, and I therefore think that we should adopt the Smith amendment if we intend to retain things standing as they are.

The Chairman — The question occurs on the amendment of Mr. Smith. The Secretary will read.

The Secretary — By Mr. E. N. Smith: On page 1, line 5, strike out the word "fifty-one" and insert the word "fifty"; and strike out the bracket. In line 6 insert a bracket after the period. In line 8 strike out the word "who" and insert in place thereof the word "them".

The Chairman — All in favor of this amendment say Aye, contrary minded No.

Mr. J. L. O'Brian — Rising vote.

The Chairman — The Chair is in doubt. All in favor of the amendment will rise. All opposed to the amendment will rise. The Clerk will announce the result.

The Secretary — Ayes, 65; Noes, 28.

The Chairman — The amendment is carried.

Mr. Wickersham — I now move the adoption of the section as amended.

The Chairman — The question now occurs on the adoption of the section as amended. All in favor of the adoption of the section as amended will say Aye, contrary minded No. The section as amended is adopted.

Mr. Baldwin — Mr. Chairman, it appears last evening Section 1 was adopted without comment, and inadvertently the matter was overlooked. Either at this time or before we finish I should like to make a motion for its reconsideration, not involving at all the question of apportionment, but involving the question of whether we should add to that first section an exception where we vest the power in the Senate and Assembly by adding the words " except as herein otherwise provided ", so as to make that conform with our home rule measure, where we have given certain legislative power to the cities of this State. I should like to make the motion either now or after we get along.

Mr. Wickersham — I suggest that Mr. Baldwin wait until he gets along with the rest of the section.

Mr. Baldwin — Then with that permission, I will withdraw the amendment.

The Chairman — The Secretary will read the new matter in Section 3.

The Secretary — " The Senate Districts shall remain as at present constituted until altered as hereinafter provided. Each district shall be entitled to one Senator. The districts shall be numbered from 1 to 51 inclusive."

Mr. Wickersham — Mr. Smith proposed an amendment to that.

The Chairman — The Secretary will now read the amendment offered by Mr. E. N. Smith.

The Secretary — On page 2, line 1, strike out the brackets, and in line 4 insert a bracket before the word " district ".

Mr. Wickersham — Mr. Chairman, there is another amendment, is there not?

The Secretary — On page 10, line 14, strike out all after the period, and strike out line 15.

Mr. E. N. Smith — Mr. Chairman, that is simply to correct, or to meet the situation which has developed, and to leave the situation just as it is in the present Constitution and simply strikes out the districts which are unimportant, and which ought not to be in the Constitution as it is proposed.

Mr. Westwood — According to this amendment, it leaves in the sentence that each district shall be entitled to one Senator; that is on page 2, at the end of line 2, it leaves in " each of whom shall choose one senator ", and then again on page 10, line 13, it reads:

"Each district shall be entitled to one senator", and I suggest to him that in the latter part of that amendment on page 10, which has just been read, that it provides that the striking out shall commence with the period on line 13 and go down to the period on line 15, on page 10.

Mr. Wickersham — Mr. Chairman, may I ask Mr. Westwood what the amendment was?

Mr. Westwood — The amendment to Mr. Smith's proposal is this: That on page 10, where Mr. Smith proposes to strike out the sentence on line 14, and ending on line 15, I suggest that he strike out both sentences, that sentence and the sentence commencing on line 13 and ending on line 14, because the same matter is included in line 2, page 2.

Mr. E. N. Smith — Mr. Chairman, the suggestion by Mr. Westwood simply, in effect, strikes out an expression which is tautological, and, therefore, the sense, or the meaning remains the same. Instead of placing the bracket which I proposed in line 14, it should be inserted before the word "each" in line 13.

Mr. Westwood — You mean, to strike out the two sentences instead of the one on page 10.

Mr. Wickersham — Yes.

Mr. Westwood — And will you not also change the pronoun, the relative pronoun on page 2, line 2, from the personal to the impersonal, that is, from "whom" to "which"?

Mr. E. N. Smith — You mean, to make it grammatical?

Mr. Westwood — Yes.

Mr. E. N. Smith — Yes, I think that is right. I move to amend by striking out the word "whom" on page 2, and by substituting in place thereof the word "each".

The Chairman — The Chair understands that Mr. Smith accepts the suggestions by Mr. Westwood.

Mr. E. N. Smith — Yes.

The Chairman — The Secretary has noted those. Will the gentleman send the amended amendment to the desk?

Mr. Parsons — Mr. Chairman, may I make this suggestion to Mr. E. N. Smith. That it is a mistake to strike out "Each district shall be entitled to one senator". It ought to appear in the Constitution.

Mr. Westwood — It is there. You will find it on line 2, page 2.

Mr. Parsons — I see; I stand corrected.

The Chairman — The desk is waiting for the amendment by Mr. Smith as corrected.

The Secretary — Mr. Chairman, the Secretary has noted the amendment as he understood it.

The Chairman — The Secretary will read it as he understands it, and if Mr. Smith will attend carefully, we will get it straight.

The Secretary — On page 2, line 1, strike out the bracket, and on page 2, line 2, strike out the word "whom" and insert in place thereof in italics the word "each". On page 2, line 4, insert a bracket before the word "district". On page 10, line 13, strike out all after the period, and strike out all of lines 14 and 15.

The Chairman — The question occurs on the amendment offered by Mr. E. N. Smith, which the Secretary has just read. All in favor of the amendment say Aye, contrary No. The amendment is carried. The question now occurs upon the adoption of Section 3 as amended. All in favor of the adoption of Section 3 as amended will say Aye, contrary minded No. The section is adopted as amended.

The President — Section 4.

Mr. Bernstein — I offer an amendment.

Mr. Wagner — Mr. Chairman, the amendment which I offered when the bill was first considered was withheld until we reached the section to be amended.

The Chairman — There are certain amendments to Section 4 which the Secretary will read.

Mr. Wickersham — Mr. Chairman, there was an amendment offered by Mr. E. N. Smith.

The Chairman — There was a Smith amendment and I think the Haffen amendment and Mr. Wagner's amendment.

Mr. M. J. O'Brien — I offer the following as a substitute.

The Chairman — Will the Secretary now read the amendments in the order of their introduction.

Mr. M. Saxe — Mr. Chairman, wouldn't it be wise to have all these amendments at the desk, and all the amendments to Section 4 read before taking up any of them?

The Chairman — The suggestion is made that as many amendments as are contemplated be introduced and that they be now sent to the desk.

Mr. M. Saxe — Mr. Chairman, I offer the following amendment to Section 4.

The Chairman — Mr. M. Saxe offers an amendment.

Mr. Parsons — I offer an amendment to Section 4, and also one which applies alike to Section 5, and which relates to the use of the words "election district".

The Chairman — The Secretary will now read the amendments in the order of their introduction.

Mr. Wickersham — Mr. Chairman, Mr. Smith's amendment was first.

The Chairman — The Secretary informs the Chair that Mr. Wagner's amendment was at the desk first.

Mr. Wickersham — Mr. Chairman, Mr. Smith's amendment was offered before any other amendments. I think we ought to follow that order, Mr. Chairman.

Mr. Wagner — If I may clear up this question. I offered my amendment before Mr. E. N. Smith offered his, and I was asked whether it applied to Section 1, and I told the Chair no, and I also said that I understood that the bill was to be considered as a whole, and it applied to Section 4, and the Chair suggested that I hold my amendment until we reached Section 4, and after that Mr. Smith offered his amendment applying to Section 2 as well as to Section 4.

The Chairman — The recollection of the Chair agrees with Mr. Wagner's statement, and the Secretary will now proceed with the reading.

Mr. E. N. Smith — Do I understand that a vote is now to be taken on Mr. Wagner's amendment?

The Chairman — No. No vote is to be taken until it has been debated, but the amendments are to be read now for the information of the Committee.

Mr. Lincoln — I would like to direct the attention of the Committee of the Whole to the bill by Mr. Betts, No. 396 on the printed calendar. And I would suggest to Mr. Betts that he introduce his amendment and have it read at this time. I merely call attention to his printed number, so that those delegates who wish may look it up.

Mr. Wickersham — Is that an amendment to the pending section?

Mr. Lincoln — Yes.

Mr. Wickersham — It is suggested he make an amendment?

Mr. Lincoln — It is an amendment as to the census.

The Chairman — The Chair is of the opinion that we will proceed very much more expeditiously if the Committee will just listen to the reading of the amendments which have been now introduced.

Mr. Betts — Mr. Chairman, I offer the following amendment.

The Chairman — Mr. Betts will send his amendment to the desk. The Secretary will proceed.

The Secretary — By Mr. Wagner: On page 11, line 10, after the word "territory" eliminate the words "and no county". On page 11, eliminate the lines 11 and 12. On page 11, line 23, eliminate all of the line, except the first word. On page 11, eliminate lines 24 and 25. On page 12, eliminate line 1 and line 2 down to the words "the ratio".

The Chairman — The Secretary will read all of these amendments so that they will all be before the House.

The Secretary — By Mr. Haffen: On page 11, line 1, strike out the word "six" and substitute in place thereof the word "two". On page 11, lines 5, 6 and 7, strike out the following: "According to the last State enumeration, or if no State enumeration shall have been taken within a period of five years prior to such apportionment then".

Mr. Haffen — And substitute "according to the preceding Federal census".

The Chairman — The Secretary has read the amendment as sent to the desk.

Mr. Brackett — I suggest to the man manifesting charge of the bill, that that amendment is a proper one to accept.

The Secretary — By Mr. E. N. Smith: On page 11, strike out the brackets in lines 24 and 25. On page 12 strike out the bracket and italicized words in lines 1 and 2. Strike out the words "fifty-one" on lines 4 and 5 and insert the word "fifty" in the place thereof. Strike out the brackets in lines 5 and 10.

Mr. Wickersham — Mr. Chairman, is there not also in that amendment a motion to strike out in line 5 the word "fifty-one" and substitute "fifty"?

Mr. E. N. Smith — May I have read in that connection my other amendment on page 11, which I introduced this morning?

Mr. Stimson — Is there not a misprint in the bill on line 5, page 12, to which Mr. Wickersham has called attention, the words "fifty-one"?

Mr. Wickersham — The "one" should be in brackets?

Mr. Stimson — No, the word "one" should be in italics, and that should be stricken out if Mr. Smith's amendment is made.

Mr. Wickersham — Mr. Chairman, Mr. Smith's proposed amendment to this amendment on page 11, line 25, called for the insertion of the words "on the first day of January, one thousand eight hundred and ninety-five" and the striking out of the word "now".

The Chairman — The Secretary has not that amendment at the desk.

Mr. Wickersham — It was offered.

Mr. E. N. Smith — The amendment was sent to the desk.

The Chairman — I am informed by the Secretary that he has not that amendment.

Mr. E. N. Smith — I will send another copy up.

The Chairman — The Secretary will read the correction or the addition.

The Secretary — On page 11, line 24, strike out the word

"now" and insert after the word "organized" in line 25, the words "on the first day of January, one thousand eight hundred and ninety-five".

The Chairman — Is the Chair to understand that this is all part of the same amendment?

Mr. E. N. Smith — Yes.

Mr. Franchot — Mr. Chairman, I remember that yesterday the period was to be changed to a comma in line 5 on page 12 as a part of that amendment, and I would like to know if that has been noted.

The Chairman — The Secretary will proceed to read the other amendments.

The Secretary — By Mr. Bernstein. On page 11, line 24, strike out the brackets.

By Mr. M. J. O'Brien, substitute proposed amendment, Printed No. 722.

Mr. M. J. O'Brien — May I be permitted to explain my substitute? It seems to me, if the gentlemen of the Convention will bear with me a moment, we can clarify this situation. The Committee on Legislative Organization have presented here in respect to this section a report which attempts to extend the limitations upon the true representation as we see it of the city of New York, by taking that limitation and extending it so that it shall include the two additional counties of Richmond and Queens. Now, Mr. Smith has suggested by his amendment, as I understand it, that we go back to the Constitution as it is to-day, which continues the limitation that New York city shall not have one-half of the representation. It confines it, in fixing the territory. It is only as to the two counties. It fixes it so that there remains the present limitation in the Constitution. Now, my substitute — of course, if that amendment of Mr. Smith's should be adopted, it would leave the Constitution and the limitation as it is to-day. Now, then, for the purpose of bringing up the question — I am not going to discuss it on the merits, because everybody had a full opportunity to discuss it when it was before us — my substitute is for the purpose of removing that limitation so that the city of New York shall have a representation based upon its population and its vote.

The Secretary — By Mr. Saxe: In section 4, page 11, line 10, after the word "territory" insert "as far as practicable".

By Mr. Parsons: After the period in line 2, page 11, insert the following: "at the regular session of the Legislature in each ten years after the year one thousand nine hundred and twenty-six, the Senate districts shall be altered as herein provided, and shall remain unaltered until the time appointed for another alteration".

Mr. Parsons — May I have a moment to explain that?

Mr. E. N. Smith — I did not know that I had charge of the bill.

Mr. A. E. Smith — Mr. Chairman, I will take charge of it, if nobody else will.

Mr. Parsons — You are the wrong Smith.

The Chairman — Mr. Parsons has the floor.

Mr. Brackett — Mr. Chairman, I supposed Tammany Hall was already in charge of the thing, so that was not necessary.

The Chairman — Mr. Parsons has the floor. Will the gentleman yield?

Mr. Parsons — Certainly.

Mr. R. B. Smith — That amendment is perfectly drafted, and is necessary, and the provision which it is intended to cover was in my draft of the bill which was left out by Senator Brackett by error.

Mr. Parsons — Mr. Chairman, the object of it is to make this a principle which will be self-acting for the future. As the bill was reported, it only provided for reapportionment this current year and up to 1926, but nothing for 1936.

Mr. E. N. Smith — As I understand the apportionment article it is as Mr. Parsons has said, a self-operating article, and his amendment simply restores that character to the bill and is without, as far as I am concerned, any objection. I did not see the phraseology, but the purpose he seeks to accomplish, it seems to me is proper.

The Chairman — Will the gentleman pause until the Secretary has read the amendment? The Secretary will proceed.

The Secretary — By Mr. Parsons: On page 11, lines 13 and 17, strike out the words "election districts" and in lines 12 and 16, page 16,—

Mr. Parsons — Mr. Chairman, may I make a brief explanation of that? It applies to both Sections 4 and 5, and the object is to strike out the words "election districts" and restore the word "block".

Mr. Wickersham — May I call attention to the fact that it does not appear to strike out the brackets.

Mr. Parsons — The Secretary has not read all the amendment.

The Chairman — If the gentlemen will allow the Secretary to read the amendments we may get it in such shape that they can be understood. The Secretary will proceed.

The Secretary — On line 18, page 11, strike out the brackets, and in lines 13 and 14, 17, 18, page 11,—

The Chairman — The Secretary is unable to understand the amendment and may the Chair ask Mr. Parsons to rephrase the

amendment so that the two sections which are amended shall be separately stated, and send it in writing to the desk?

Mr. Parsons — All right; I will attend to it.

The Chairman — The Secretary will proceed with the next amendment.

The Secretary — By Mr. Betts: On page 10, strike out the lines 22, 23, 24 and 25, and on page 11, line 1, and all of line 2, to and including the word "legislature", and substitute the following: "The Legislature at its first regular session after the return of the State enumeration for the year 1915 shall redivide the State into Senate districts, and may in its discretion make such redivision at the first regular session after the return of the next United States census. Thereafter it shall make such redivision on the first regular session at the expiration of every tenth year after the year 1920."

By Mr. Westwood: On page 11, line 24, strike out the bracket; on page 11, line 25, strike out the bracket; page 12, line 1, strike out the bracket and the words in italics. Page 12, line 2, strike out the words in italics. Page 11, line 24, enclose the word "now" in brackets. Page 11, line 25, after the word "organized" insert "on January 1, 1895".

Mr. Lincoln — Mr. Chairman, has the Secretary finished the reading of the amendments?

The Chairman — The Secretary has.

Mr. Lincoln — Might I suggest that the Committee take this section up first, as to the paragraphs providing for enumeration, and afterward the second paragraph, relating to the divisions of blocks, or election districts, as to the question of New York city, later. We might, it seems to me, very properly dispose of these different propositions separately —

Mr. E. N. Smith — It seems to me it would lead to clarity of action on the part of the Committee if we took up the proposals which have been introduced by me, because they refer to a definite line of thought, to restore the provision with reference to the scheme or method of apportionment as it was in the Constitution, and these other amendments which are made necessary by the changes of time may be taken up as an entirely separate proposition. Therefore, I would suggest that those matters be cleared up. Of course, I assume Mr. Wagner's proposal would have to be taken care of, because it is first on the list in the order that we might follow.

The Chairman — The proposed section is open to discussion.

Mr. Lincoln — I move that the Committee take up the first paragraph of the section, the enumeration, which has nothing to do with the other amendments proposed.

Mr. M. Saxe — It seems to me, Mr. Lincoln's suggestion is the intelligent one, and I hope that will be followed.

The Chairman — The Committee has heard the motion of Mr. Lincoln.

Mr. D. Nicoll — Mr. Chairman, I rise to a point of order. The rules require that we take up the amendments in order. We are now to take up Mr. Wagner's amendment unless otherwise directed by the House. Why not take them up just as they are, instead of going off into another field?

Mr. Wagner — Mr. Chairman, the proposal offered by Judge O'Brien covers the same point as my amendment. His offer is in the form of a substitute, and perhaps a little more accurate and scientific than mine, and I suggest that we vote on Judge O'Brien's amendment in the order that mine would be voted.

Mr. Lincoln — Have you any objection to voting upon the question of the enumeration contained in the first paragraph before coming to these subjects?

Mr. Wagner — No.

The Chairman — The question will have to be put upon these amendments in their order, and then upon the whole section, either amended or not amended, as the case may be. Of course, the discussion can take place in any way the members choose to discuss it, but the whole matter is covered by a rule to the effect that we take the amendments up in order.

Mr. D. Nicoll — If Mr. Lincoln insists, I withdraw.

Mr. Lincoln — I do think we are going to waste a lot of time if we are going to take up the amendments in the order they are introduced. I think we ought to take them up by subject-matter. I don't care whether we take this paragraph first or last.

Mr. Wickersham — Mr. Chairman, I rise to a point of order. Our time is running short.

The Chairman — We have sixteen minutes left.

Mr. Wiggins — It seems unnecessary to me to get very apprehensive about this, when this can all run along in a nice, smooth, easy way. Two months ago when we were here, the Democrats were very apprehensive and suspicious, and Mr. Wagner had a long time, and Mr. Baldwin and the rest of my friends, but that apprehension has now been removed. Mr. Wagner's amendment will be voted down and then Mr. Smith's amendment will be passed. This section, as I understand, was originally passed so that New York city would not have more than 50 per cent. of the Senators. Mr. Clinton so advised us in a very eloquent speech when the matter was presented some time ago, and other Republican delegates from up-State made the same presentation of facts, and we were all ready to believe that is what this provision was inserted for, that

no one big center of this State should have more than 50 per cent. of the Senators and control the State of New York. Now, this amendment as proposed, and as I read it, is designed to accommodate change in conditions. At that time it was believed that the provision as to the two counties would take care of it. Now the counties have been changed, the city has increased in size, and this provision is designed, as I interpret it, to provide that the city of New York shall not have more than 50 per cent. of the Senators. Now, that is the real question before this House, irrespective of what all these amendments may mean; that is the real meat in the cocoanut. And all the gentlemen sitting within range of my voice know and understand that is the fact. Now, the only question is whether we shall do differently than our Democratic friends would do if they were in the majority here. There would be no question what would happen if we were in the minority. This apportionment plan would all be laid out and be all ready to pass, and would go through. Now, the only question for us to decide is whether we shall surrender, we from up-State shall surrender and permit the city of New York, by 1926, to have more than 50 per cent. of the Senators. I understand from Mr. Smith that there will be, in the next apportionment in the city of New York, and by 1926 there will be more than 50 per cent. The only question is, shall we people from up the State surrender to the city of New York more than 50 per cent. of the representation in the Senate? That is the sole question. For my part, I am not willing to do that. I know that what I may say on the subject is entirely futile, because it is going to roll along, and this section will be left as it is, but I address myself at this time to that subject so there may be no question as to where I stand on the subject, and where many other of the up-State people, irrespective of politics, stand on the same subject, and that is, that the city of New York shall not have more than 50 per cent. of the Senate and shall not control the State of New York.

Mr. Bernstein — Mr. Chairman, as I stated before, this attempt at the eleventh hour of our proceedings to inject a political issue into the debate and the Constitution is unfortunate. I have supported the policy of the leaders of this Convention right along in the sincere belief that it represented an intelligent effort on their part to submit to the people a Constitution that would be generally accepted. Now, I consider it would be a mistake on the part of those same leaders to inject at this date something that will meet with a great deal of opposition in the great city of New York. From the standpoint of politics and political advantage, the passage of this particular proposal might gain two or three Senators or two or three Assemblymen; but it is going to be at the expense of

arousing the people of the city of New York to the understanding that they are to be put at a disadvantage for the next twenty years in respect to their representation in the halls of the Legislature, and arouse an opposition to this Constitution that is to be submitted to them that it does not deserve on its merits. Now, the question that Mr. Wiggins raised is the same old question that has been hashed and rehashed here. It has been said that it should not be the policy of this State to permit one section of the State, that contained within the confines of the city of New York, to control the rest of the State; that the question was a question of sectionalism. Now, I resent that view of the situation. It never is, never was, and never can be a question of sectionalism that is involved in this question. In this State we are not in the habit of voting according to sections. We are in the habit of voting according to party lines. You have never yet seen or heard of a single question in the political history of this State that resulted in the people of the city of New York, or of all of the cities of the State, voting in one way, and the rest of the State voting the other way. It never was a case of the country against the city, or the city against the country, because it is as much to the interest of the city to have the country prosperous as it is to the interest of the country to have the city prosperous. The real truth of the matter is that it is not sectional but political. In these halls of the Legislature you have never yet seen the Democrats and the Republicans from the city of New York standing against the Democrats and the Republicans from up the State, and you have not seen it in this Convention, simply because we have never yet divided, and I hope that we never will, divide along sectional lines. Now, this is purely political. It is to obtain an advantage for the Republican party in the State of New York in the years to come, and if you do that, if you enact this provision in the Constitution, you are going to arouse a sentiment in the State of New York against the adoption of the Constitution that I think, to say the least, will be a mistake. I want to plead with the gentlemen in control of this Convention, the gentlemen who have led us from one proposal to another, and have framed what, in my mind, is a Constitution that will be accepted by the people, to stop short of this proposal. Let things stand as they are; if you cannot give us equal representation, to which we are entitled by all the rules of equity, then I ask you to leave the situation stand as it is.

Mr. Wickersham — Mr. Chairman, the time set for the consideration of this measure has almost expired. I think we shall want another half-hour to finish, and I therefore move that the Committee rise —

Mr. Sheehan — Let's do it by unanimous consent.

Mr. Wickersham — You can't do it — rise and report progress and ask leave to sit for half an hour, speeches of individuals to be limited to five minutes each and the vote to be taken not later than 12:30.

The Chairman — You have heard the motion of Mr. Wickersham. All in favor will say Aye, contrary-minded No. The motion is carried. (The President resumes the Chair.)

The President — The Convention will come to order.

Mr. Sears — Mr. President, as Chairman of the Committee of the Whole I beg to report that the Committee of the Whole has had under consideration special order which is General Order No. 67, and has risen and asks leave to sit again for an additional half hour, that is until half past twelve, speeches of members to be limited to five minutes, and the vote to be taken at half past twelve.

The President — Not later than half past twelve.

Mr. Sears — Not later than half past twelve.

Mr. Sheehan — It does seem to me that the limiting of this debate on this very important question — I don't mean on the old questions that were debated several weeks ago, but limiting the debate on the various things that are here — to half an hour, is rather absurd.

Mr. Wickersham — Mr. President, the only contentious subject here is one that we have debated on, and come to a definite conclusion upon some time ago. The incidental things are all matters of small moment and I think if we address ourselves to the consideration of them we will get through easily —

Mr. Sheehan — Mr. President, I suggest one o'clock instead of half-past twelve.

Mr. J. L. O'Brian — I trust that Mr. Sheehan's suggestion will not be adopted. We are establishing a bad precedent —

Mr. Sheehan — I withdraw it.

The President — The suggestion is withdrawn. All in favor of granting the leave upon the conditions asked will say Aye, contrary No. The leave is granted, the Committee to return forthwith to the consideration of the pending special order, speeches of the members to be limited to five minutes each, and the vote to be taken, the vote upon the measure and all pending amendments to be taken not later than half-past twelve. The Convention will return to the Committee of the Whole. Mr. Sears will be good enough to resume the Chair. (Mr. Sears resumes the Chair.)

The Chairman — The Convention is now in Committee of the Whole.

Mr. Sheehan — Mr. Bernstein has just said if this Convention

will not change the present constitutional apportionment, and base it upon population, that, at any rate, the Convention ought not to impose upon the people the additional restriction that is provided for in this measure. Mr. Chairman, there is not any difference, so far as the injustice of the thing is concerned, between the present proposition — between the crime of 1894, as it was called by Mr. Nicoll, and the proposition that is upon our files. One is just as bad as the other; and if the proposition that is before us is wrong and vicious, the proposition that was presented to the Convention of 1894 was just as vicious. Now, Mr. Chairman, this proposition means what? Let us understand it. And I particularly appeal to my friends of the minority, for we have listened to appeals to the majority recently made upon this floor. Let us see what it means. This is a method, an indirect method, to get the seal of your approval upon the crime of 1894. This proposition means that you are going, not to make an apportionment, written in the Constitution of senatorial districts directly, but you are going to do it indirectly. If this proposition is rejected, and, gentlemen, it is going to be, this whole apportionment scheme is going to remain practically as it is, and that is the purpose of the majority. We are going to have written in the Constitution that senate districts shall be altered by the Legislature at the first regular session after the return of the State enumeration taken in the year 1915. The Legislature, half of it, has already been elected. And the Senate, two-thirds Republican, is going to continue for another year. The mandate is that there shall be an apportionment at the next regular session following the return of the enumeration. So that, if that mandate is carried out and the Legislature is asked to make that apportionment, what do you find? That the apportionment we now have in the Constitution is going to continue because the two-thirds of the Republican senators are not going to give you what this Convention denies. Mr. Chairman, thirty years ago I entered this body. In that time we have had many governors. Democratic governors have held the chair for fourteen years; Republican governors have held the chair sixteen years. During that thirty years, the Democratic party, under the apportionment that we have been working under, and its predecessor has had control of the Senate and Assembly but four years. So, Mr. Chairman, the wrong that we cry out against is in the old Constitution and I protest against its perpetuation by this Convention. I warn my friends of the minority that any step they may take here indirectly to put their stamp of approval upon the crime of 1894 will meet with the rebuke that it deserves when they return to their constituencies. Mr. Chairman, my time has expired, and I must forego saying many things I should like to say.

The Chairman — The question here is on the elimination of the words in lines 10, 11 and 12, page 11, beginning with the words "no county", and the elimination of the words in lines 23, 24 and 25 of page 11, and the first two lines of page 12, beginning with the words "no county".

Mr. Byrne — Whenever I hear one of the majority speak with relation to this measure, the thing that I admire the most is the ability of the speaker to keep his face straight. Mr. Wiggins says the reason for this clause in the Constitution is that it would never do to permit one center of the State to control the rest of it. That is the reason he gives. The real reason is, and every one within the hearing of my voice knows it, that most of the time the city of New York has the habit of going Democratic. Of course, it would never do to permit a section of the State where more Democrats are gathered than Republicans to be in a position to control, as they say, the whole State. Mr. Wiggins says, what would the Democrats do if they were here? Well, I am going to tell you what I said about this clause when it was first shown to me. I don't know what violation of the penal law the Republican party will ever be convicted of, but I am sure it will never be petty larceny. This thing is daring, gentlemen. The Constitution as it stands at this moment — there are certain things in it which I am not going to name now, certain sections have been antagonized, or think they have, and that is what counts, what they think about it, not whether they really have been. Certain classes of people think there has been something done against them. There is talk about it now. Are you going to leave something in this Constitution which says to millions of people "no matter how big you grow, you shall never be represented as the rest of the state is". I agree with Dr. Schurman along the lines he spoke some time ago, that the majority rule does not always apply. It does not apply if conditions exist which require some different rule, like the Negro question in the south. That is not the question here, and you know it. We all know it. The question is how to keep us down at the end of the State so that, although we are paying 73 per cent. of the taxes — you say that does not matter. Oh yes, it does. There ought to be something for those who foot the bills when, in addition to that, we have the greater number of people. The rule should be the same throughout the entire State. Just one word more and I am through. I have said that this is daring — daring only in its effect. Subtlety of mind was referred to here at one time by Mr. Stimson. What subtlety was in the mind of the man that framed that clause "no two counties adjoining or separated by public waters"! How simple and innocent it reads; almost as innocent as my friend

from Columbia this morning, when he says it does not change it except to add a few counties down at the end of the State. That is all. Why don't they come out, if they are going to do this thing, and say that Brooklyn and New York shall never have it? Gentlemen, I agree with Mr. Nicoll; half a loaf is better than none. I think, however, that we have a right at least to complain when we feel that we are entitled to a whole loaf and you are only going to give us half of one.

Mr. Mereness — I only want to observe, Mr. Chairman — I am not going to take up any time — that in view of the solemnization of the nuptials this morning, it will no longer be possible for anybody truthfully to say that it is not possible for cream to rise upon spilled milk.

Mr. Quigg — So far as Mr. Smith's amendment and the Committee proposition are concerned, it is tweedle dum and tweedle dee. We shall find New York, under either provision, with precisely the same representation. There is nothing in the controversy. I am inclined to vote for Judge O'Brien's amendment. What I mean is this: The city of New York is going to get it sooner or later. A city which is going to control the world from Gravesend Bay to Calcutta and back again, sooner or later is going to control the country districts of the State of New York. I do think that the gradual process is the better process. It will come sooner or later and it looks to me as if it were coming very soon. We are disturbed, of course, by the shifting population there, the foreign population, but it is getting into attune with the rest of the country and the rest of the State. We have a most signal illustration of that here. This Senator, that has led his party, born in Prussia, coming here when he was eight years old and rising to the distinction that he has, not only in the Legislature and before the people of New York, but right here in this Convention, is an illustration of the fact that we are all getting together, that the melting pot is working, and that sooner or later the political consideration that controls us has got to pass away and we have got to submit to the political determination of the population of New York city. It is coming, and it is coming fast. Whether we should restrain it twenty years or not, is, to my mind, not an important consideration.

Mr. Wickersham — The other day when my friend, Mr. Quigg, made his charming and beautiful allegorical speech, after the spell had somewhat subsided, the question on everybody's lips was "But where was the mountain lion?" So compelling was the charm of his oratory at the time that it stilled the inquiry which rose to our lips then and it was not made until too late. To-day, Mr. Chairman, he has revealed it to us. It is the Empire; it is

this great political control that is going to extend from Calcutta to Gravesend, and it is the artful suggestion of that mountain lion with which he seeks to affright the representatives from the country districts. Now, gentlemen, perhaps it is just as well that we had these little political fireworks this morning. It is out of our system. Now, let us go back to the conclusion we reached some weeks ago when we debated this and decided that the only barrier we needed against this growing imperial control of the State was to be found in the existing prohibitions in the existing Constitution and all that is necessary is to make the language of that section applicable to present conditions. I ask that we now proceed to vote upon that question, and then let us run on and get through with this article and proceed with the order of business which requires us to accomplish a great deal of work before we take our adjournment to-morrow night.

Mr. F. Martin — When this matter was up some time ago was it not practically agreed that the present language of the Constitution, that no two counties or the territory thereof as now organized should have more than one-half the Senators, should be retained instead of altering it so that it will include the county of Bronx, making it three counties? Was not that the agreement here?

Mr. Wickersham — I was not a party to any such agreement and I do not know of any such agreement. Mr. Chairman, I have always supposed that the result of the debate we had some weeks ago was a general acquiescence that the Constitution in that respect should be left with the present provision and I am happy to say, Mr. Chairman, that, with the elimination of the political controversy over that matter, we have gone on in a spirit of nonpartisan effort to produce for the people of New York the best Constitution that we were capable of formulating. I am happy to say now, and I shall be happy to testify hereafter, to the spirit in which both Democrats and Republicans alike have united in this work. I hope, Mr. Chairman, that nothing at this late hour will arise to disturb that spirit, because I think it has made for the benefit of the people of the whole State, and the people of the State will applaud our efforts, carried on as they have been in that spirit.

Mr. Schurman — I should like to ask Mr. Wickersham, confronted as we are with this multitude of amendments, what language or what amendment, in his opinion, is best adapted to leave the Constitution as it is in this respect?

Mr. Wickersham — Mr. Chairman, I think the amendment proposed by Mr. E. N. Smith, supplemented by that of Mr. Herbert Parsons, will accomplish that purpose.

Mr. Unger — General Wickersham, will you do me a favor and see that this proposal and the short ballot proposal are submitted as separate propositions?

Mr. Wickersham — That is not for me to say; that is for the Convention to decide.

Mr. Wagner — Mr. Chairman, just a moment. So that there may be no misunderstanding about the members of the minority here who represent the city of New York, they never have been, and I am sure they never will be, a party to an agreement that there shall be any limitation placed upon the representation which the citizens of that city should have in the State Legislature. Any suggestion here that any of us entered into an agreement to accept one limitation as against another is not based upon facts. We are as much opposed to-day as we were on the day that the original argument on reapportionment came up, to the unjust limitation placed upon the citizens of the city of New York. We did discuss it. We had it all out, and a vote was taken which indicated that it was the sentiment of this Convention that they would not take out that limitation or at least relieve the citizens of New York city from that restriction now imposed upon them. From the beginning of the Convention, in many of the matters we have been absolutely non-partisan; with the exception of the home rule measure and the provision as to the sinking fund which I urged upon the Convention to adopt, we have been acting in a spirit of non-partisanship. But upon this question, it is purely politics and I hope that no one will be deceived by the restriction you are placing upon New York. It is not a territorial restriction, but it is merely because it is a Democratic community, and the restriction upon it will prevent us, except under extraordinary conditions in this State, from ever getting control of the Legislature of this State. That is what dictated the crime of '94 and that is what dictates its retention in the present Constitution.

Mr. R. B. Smith — Under the proposal of E. N. Smith for three counties, do you mean to say that New York city will not have at least twenty-six Senators in 1926?

Mr. Wagner — As between the two, Mr. Smith, of course the E. N. Smith proposal is the lesser restriction; and of two injustices, it is the less unjust. That is the only merit of it. Upon the great principle, I hope that no one here will understand the position of the minority to be that we concur in the crime of '94.

Mr. Deyo — Did not the people of the city of New York in 1894 vote by a large majority to place this restriction upon themselves? How can the gentleman refer to that as a crime when the people themselves in the city of New York voted for it by a large majority?

Mr. Wagner — Mr. Deyo, I hope you will separately submit a proposal to the citizens of the city of New York as to whether there shall or shall not be this restriction upon their representation, and I will show you then, as the result of that vote, what the sentiment in that city is.

Mr. Deyo — Was not that question submitted as a separate proposition in 1894?

Mr. Wagner — I am not speaking of '94.

Mr. Byrne — Was there anything in the wording of the Constitution at that time which said that the cities of Brooklyn and New York should never have half the representation?

Mr. Wagner — There was not.

The Chairman — The question occurs upon the amendment of Mr. Wagner. The Secretary will read the amendment.

The Secretary — On page 11, line 10, after the word "territory" eliminate the words "and no county".

Mr. Wagner — The substitute offered by Judge O'Brien covers the same point, perhaps better than my amendment, and I suggest that, instead of taking a vote upon my amendment, a vote now be taken first upon Judge O'Brien's proposal.

The Chairman — The Chair is unable to put the question in that order.

Mr. M. J. O'Brien — Mr. Chairman, I move it as an amendment to Mr. Wagner's motion.

Mr. Wagner — I will accept it as a substitute for my amendment, or as an amendment.

The Chairman — Mr. O'Brien's amendment is offered as a substitute for the amendment of Mr. Wagner, which Mr. Wagner accepts as a substitute?

Mr. Wagner — Yes.

The Chairman — The Secretary will read the substitute for Mr. Wagner's amendment offered by Mr. O'Brien.

The Secretary — Mr. O'Brien moves to substitute for Section 4 the following: Section 4. An enumeration of the inhabitants of the state shall be taken under the direction of the secretary of state during the months of May and June in the year one thousand nine hundred and twenty-five and in the same months every tenth year thereafter and the said districts shall be so altered by the legislature at the first regular session after the return of every enumeration that each senate district shall contain as nearly as may be an equal number of inhabitants excluding aliens and be in as compact form as practicable and shall remain unaltered until the return of another enumeration and shall at all times consist of contiguous territory. No town and no block in a city enclosed by streets or public ways shall be divided in the formation of senate districts,

nor shall any district contain a greater excess in population over an adjoining district in the same county than the population of a town or block therein adjoining such district. Counties, towns or blocks which from their location may be included in either of two districts shall be so placed as to make said districts most nearly equal in number of inhabitants excluding aliens. The ratio for apportioning the senators shall always be obtained by dividing the number of inhabitants, excluding aliens, by fifty, and the senate shall always be composed of fifty members; except that if any county having three or more senators at the time of any apportionment shall be entitled on such ratio to an additional senator, or senators, such additional senator or senators shall be given to such county in addition to the fifty senators and the whole number of senators shall be increased to that extent.

The Chairman — All in favor of the amendment will rise. The gentlemen will take their seats. All opposed will rise. It is unnecessary to count. The amendment is lost. The question now occurs on the amendment of Mr. Haffen. The Secretary will read.

The Secretary — On page 11, line 1, strike out the word "six" and substitute in place thereof the word "two", reading "one thousand nine hundred and twenty-two". On page 11, lines 5, 6 and 7, strike out the following: "according to the last state enumeration, or if no state enumeration shall have been taken within a period of five years prior to such apportionment, then according to the preceding federal census".

Mr. Haffen — I ask for a vote first on substituting 1922 for 1926. The reason why I introduced that amendment was to have a proper apportionment of the State by the next Legislature after the Federal census of 1920. I would like to have those divided because I believe there is no opposition to the second amendment I introduced, in accordance with the preceding Federal census.

The Chairman — Mr. Haffen, you desire the question to be divided?

Mr. Haffen — Yes.

The Chairman — What is the first question? The Secretary will read the first question in Mr. Haffen's amendment.

The Secretary — On page 11, line 1, strike out the word "six" and substitute in place thereof the word "two", reading "one thousand nine hundred and twenty-two".

The Chairman — All in favor of the amendment as read will say Aye, contrary-minded No. It is lost. The second part of Mr. Haffen's amendment will now be read.

The Secretary — On page 11, lines 5, 6 and 7, strike out the following: "according to the last state enumeration, or if no such enumeration shall have been taken within a period of five years

prior to such apportionment, then in accordance with the preceding Federal census".

Mr. Haffen — I understand that is the one that is agreeable.

The Chairman — All in favor of this part of the amendment will rise. The gentlemen will be seated. Those contrary-minded will rise. The amendment is lost. The question now occurs on the amendment by Mr. E. N. Smith. The Secretary will read.

The Secretary — On page 11, strike out the brackets in lines 24 and 25. On page 12 strike out the brackets and italicise the words in lines 1 and 2. Strike out the words "fifty-one" on lines 4 and 5 and insert the word "fifty" in place thereof. Strike out the brackets in lines 5 and 10. On page 11, line 24, strike out the word "now" and insert after the word "organized" on line 25 the words "on the first day of January, one thousand eight hundred and ninety-five".

The Chairman — All in favor will say Aye.

Mr. Barnes — Mr. Chairman, there are two subjects involved here: The first proposition is whether Queens and Richmond shall be included, and second is, the method of making an apportionment.

Mr. Wickersham — A point of order. It seems to me that the division is not included in the amendment, it refers to the whole section. There is nothing about the question of Richmond there.

Mr. Barnes — Why, certainly. If the bill as reported by the Committee on Legislative Organization remains as it is, Queens and Richmond are included.

Mr. Wickersham — You have the brackets in the wrong place.

Mr. Barnes — If I am wrong, then all right.

Mr. E. N. Smith — I did not understand the purport of Mr. Barnes' request.

Mr. Root — He had the wrong place.

The Chairman — All in favor of the amendment as read will say Aye, contrary-minded No. It is carried. The question now occurs on the amendment of Mr. Bernstein. The Secretary will read.

Mr. Bernstein — Mr. Chairman, that amendment is substantially a part of Mr. Smith's amendment and I therefore withdraw it.

The Chairman — Mr. Bernstein's amendment is withdrawn. The question now occurs on the amendment of Mr. Martin Saxe. The Secretary will read.

The Secretary — By Mr. Saxe: On page 11, line 10, after the word "territory" insert "as far as practicable".

The Chairman — All in favor of the amendment will rise.

Mr. M. Saxe — This is to take care of Richmond and Rockland counties.

The Chairman — The gentlemen will be seated. Contrary-minded will rise. The amendment is lost. The question now occurs on the amendment of Mr. Parsons.

Mr. Parsons — Mr. Chairman, Mr. Betts and I desire to withdraw the amendments we have submitted, and we have combined on an amendment which I will send to the desk.

The Chairman — The question then occurs on the amendment of Mr. Westwood.

Mr. Westwood — Mr. Smith's amendment was introduced in two parts; I introduced mine after the introduction of the first, and before he introduced the second. It is now covered. That part of the section to which my amendment pertained is now covered by Mr. E. N. Smith's amendment, and I withdraw mine.

The Chairman — Mr. Westwood withdraws his amendment. The question occurs on the amendment from Mr. Parsons. The Secretary will read.

The Secretary — On page 11, strike out the words "election district" and the words "election districts", on lines 13, 17 and 18. Strike out the brackets in lines 13, 14, 17 and 18 on the same page.

Mr. Barnes — Vote separately on that?

Mr. Brackett — I don't know that this will add anything particularly to the confusion which exists on the amendments, already adopted, but I call attention to the fact that the Federal census does not take the census by blocks. The only reason for changing from "blocks" to "election districts" is because there is no definition of "blocks" in the Federal census. Now, I understand that Brother Parsons agrees that the United States government should change its methods and refer to the enumeration by blocks. If he can make good on that, then this amendment will not add confusion to our work, but if he should happen to slip a cog or stub his toe, and not be able to get the Washington department to take the enumeration by blocks, it might lead to a very serious situation.

Mr. Parsons — Mr. Chairman, the Federal census as now taken is not available for a portion of the State, entirely apart from the "block" matter and would not be available at all except before the taking of the next census the law should be changed. That is covered by correspondence between Governor Sheehan and Mr. Stuyvesant Fish in a letter written by a director of the census which I read here on a previous occasion. Now, when the new law is passed, if the Federal government is going to make the change so that we can make use of it, so as to know who are the

inhabitants excluding aliens in our election districts, they can also change it so as to have the enumeration taken by blocks. That is merely a change of tabulation, and a perfectly simple matter, and we can expect that; but in addition to that, I wish to say this: That in the substitute which I have sent up with Mr. Betts, we cover that point.

The Chairman — You have heard the amendment. All in favor of the amendment will rise. The gentlemen will be seated. All opposed will rise. The amendment is manifestly carried. The question now occurs on the amendment of Mr. Parsons.

Mr. Root — The Parsons-Betts substitute.

Mr. Parsons — This is the Parsons-Betts substitute.

The Chairman — The Secretary will read.

The Secretary — On page 10, line 23, insert after the word "of" the words "and based upon", and on line 25 strike out all after the word "until" and all in line 1 and down to the period on line 2, page 11, and insert the following: "Altered as hereinbefore provided at the regular session of the Legislature in each year after the tabulation of the Federal Census, the Senate districts shall be altered by the legislature. Senate districts altered as herein provided shall remain unaltered until the time herein appointed for another alteration: provided, however, That if a Federal census shall not be available for any such alteration, the same shall be based upon an enumeration of the inhabitants of the State excluding aliens and the legislature shall provide for such an enumeration for that purpose". Strike out the words in italics in lines 5, 6, 7 and 8 on page 11.

The Chairman — You have heard the amendment read. All in favor of the amendment will say Aye.

Mr. Sheehan — This is a most outrageous proposition. You don't know what you are asked to vote on.

Mr. Parsons — Mr. Chairman, I ask unanimous consent, if Governor Sheehan has a question to ask.

Mr. Sheehan — Mr. Chairman, I would like an explanation made of it.

The Chairman — There being no objection, unanimous consent is given to Mr. Sheehan.

Mr. Sheehan — I would like to ask what this is?

Mr. Parsons — This is intended to provide that after this apportionment this year, which shall be based upon the State enumeration, future apportionments shall be based upon the Federal census, but if a Federal census is not available, then a State enumeration shall be taken, and the reapportionment shall be based upon the State enumeration.

Mr. Sheehan — May I have unanimous consent to ask a question?

Mr. Parsons — I would be very glad to answer.

Mr. Sheehan — The next Federal census will be taken in the year 1920?

Mr. Parsons — Yes.

Mr. Sheehan — The next enumeration of inhabitants will be taken in 1925. Now, do you propose to base the next apportionment ten years from now on a census taken five years from now? And that is the effect of your proposition.

Mr. Parsons — No, not at all, Governor Sheehan. The Federal census is available about two years after it is taken. So that under my amendment the reapportionment following the one which will be made in 1916, would be made in 1922, or 1923, and based upon the Federal census.

Mr. Sheehan — But, the apportionment cannot be made until 1926, but under an enumeration it would be based — the apportionment would be based upon an enumeration made the year before?

Mr. Parsons — Why can't it be taken until 1926?

Mr. Sheehan — Well, because, Mr. Chairman, if there is going to be an apportionment it ought to be based upon an enumeration, or a census, taken immediately before.

Mr. Parsons — That is just what this does.

Mr. Sheehan — It doesn't do any such thing. I beg to differ with you.

Mr. Parsons — I beg to differ with you, Governor Sheehan. May I read it? "At the regular session of the legislature in each year after the taking of the federal census the senate districts shall be altered by the Legislature".

Mr. Chairman — Mr. Stimson suggests that the word "taking" be changed to "publication", and by unanimous consent I will make that change.

Mr. Root — Mr. Parsons' "tabulation" would be better.

Mr. Parsons — Yes, tabulation.

Mr. Root — It should read "After the tabulation of the federal census".

Mr. Parsons — If my amendment may be changed to make it the best possible amendment, I would suggest that there be inserted the word "tabulation" for the word "taking" so that it would read "After the tabulation of the federal census".

Mr. Clinton — It is simply to clarify the language; it is for the purpose of clarification.

The Chairman — The members cannot hear unless there is better order.

Mr. Clinton — You say that if the Federal census is not available, then a State enumeration shall be had. Now, the Federal census, as you have arranged it, will be available.

Mr. Parsons — No, not necessarily. It will not be available, unless the law for taking the Federal census is changed.

Mr. Clinton — Well, my criticism is this: The census will be available, although it might not be so tabulated as to be at all useful for practical purposes.

Mr. Parsons — Well, it is not available if it does not take it by blocks, and it is not available unless it gives you the inhabitants who are citizens; the Federal census, now, under the law, is not available for a reapportionment under our Constitution.

Mr. Clinton — My criticism is on the word "available". Available in form.

Mr. Sheehan — Mr. Chairman, this is a very important question, and I would like to get distinctly on the record here the reason for it from Mr. Parsons. Assuming that there will be a Federal census taken in 1920; assuming there will be an enumeration, unless we change it, in this State by the State in 1925; assuming that the Federal census becomes available in 1922, for use by the Legislature, if it wants to make use of it in making an apportionment, which is the next Legislature after your census becomes available, is it mandatory upon that Legislature to make an apportionment within that time, within the ten years?

Mr. Parsons — My answer is, Mr. Chairman, that no State enumeration will take place in 1925, and I will call Governor Sheehan's attention to the language in lines 16 to 25 on page 10, which provides for a State enumeration every ten years and which is stricken out of the bill. You will see that it is bracketed, so that no State enumeration is to be taken hereafter, unless the Legislature pursuant to amendment —

Mr. Quigg — I call for the regular order.

The Chairman — The regular order is called for. Will the Secretary again read the amendment.

Mr. Parsons — Mr. Chairman, may I ask unanimous consent to change the word "available" to "applicable"?

The Chairman — Is there any objection to that change being made?

Mr. Sheehan — This is no way to change a Constitution.

The Chairman — At what point in the amendment is that?

Delegate — I object.

Mr. Parsons — Objection is made, so we will leave it "available".

The Chairman — The Secretary will read the amendment.

The Secretary — On page 10, line 23, after the word "of"

insert the words " and based upon ", and on line 25, strike out all after the word " until " and all in line 1 and down to the period on line 2 of page 11, and insert the following: " altered as hereinafter provided at the regular session of the legislature in each year after the tabulation of the federal census, the Senate districts shall be altered by the legislature. Senate districts altered as herein provided shall remain unaltered until the time herein appointed for another alteration, provided, however, that if a federal census shall not be available for any such alteration the same shall be based upon an enumeration of the inhabitants of the state, excluding aliens, and the legislature shall provide for such an enumeration for the purpose ". Strike out the words in italics on page 11, lines 5, 6, 7 and 8.

The Chairman — All in favor of the amendment will rise. The gentlemen will take their seats. All opposed will rise. The gentlemen will take their seats. The Secretary will announce the result.

The Secretary — Ayes, 81; Noes, 30.

The Chairman — The amendment is carried. The question now occurs upon the adoption of Section 4 as amended. All those in favor will say Aye, contrary-minded No. The section is adopted.

Mr. Sheehan — Can't we have a division on that proposition, or is it too late?

The Chairman — The Chair has announced the resoult. The question now occurs upon the amendments offered to Section 5. The Secretary will read the amendments.

The Secretary — By Mr. Buxbaum: On page 15, line 4, after the word " supervisors " insert " the members elected from each county to ". On page 15 — line blank — strike out the words " such county " and insert " each county ".

The Chairman — What is the line where that change is to be made?

Mr. Buxbaum — Line 11; page 15, line 11. May I have a minute of time to explain the purport of this amendment?

The Chairman — Is there any objection?

Mr. Quigg — There is. I think we have done enough for Brooklyn.

The Chairman — The question occurs upon the amendment offered by Mr. Buxbaum, which has been read. All in favor will say Aye, contrary-minded No. The amendment is rejected.

Mr. Buxbaum — Mr. Chairman, I rise to a question of personal privilege.

The Chairman — The gentleman will please state the question of personal privilege involved.

Mr. Buxbaum — Yesterday when this article was first taken up

for consideration, I sent to the Chair and the desk the proposed amendment that was just voted on. Several times during this morning's proceedings my amendment was read, or about to be read, and I yielded from time to time to other gentlemen to give them an opportunity to explain their amendments. Now, I have been sitting here for several hours with an amendment which is of vital importance to the various counties comprising the city of New York and I am not given opportunity to explain its purport. Not a single member of this body on the floor to-day would have any objection to this amendment if I had an opportunity to explain it, and yet votes are cast against it without anybody knowing anything about it. May I again ask for the privilege of explaining its purport, and may I ask that the vote be reconsidered, and I be given an opportunity to explain the purport and purpose of this amendment?

The Chairman — The Chair thinks that there is no question of personal privilege involved, but the gentleman's motion to reconsider is in order and all in favor of Mr. Buxbaum's motion to reconsider will say Aye, contrary-minded No. The Chair is in doubt. All in favor of reconsidering this vote will rise. The gentlemen will be seated. The motion is carried. The Secretary will again read the amendment by Mr. Buxbaum.

The Secretary — On page 15, line 4, after the word "supervisors" insert "the members elected from each county to". On page 15, line 11, strike out the words "such counties" and insert "each county".

The Chairman — I understand that the time for debate is passed.

Mr. Buxbaum — Just one minute.

The Chairman — Is there objection to Mr. Buxbaum explaining the amendment? The Chair hears no objection. The gentleman will proceed.

Mr. Buxbaum — Mr. Chairman, this section provides that in each county in the State the board of supervisors shall apportion the county in Assembly districts. The city of New York is composed of five separate counties. We have no boards of supervisors in those counties, but we send members to the board of aldermen, which is a similar body. Now, this amendment proposes to give to the members of the board of aldermen elected from each county the same rights that the boards of supervisors have in every other county. It is in line with the home rule sentiment which has been exhibited in this Convention, and it gives the right to each county, to the members elected from it to the board of aldermen to apportion its Assembly districts.

The Chairman — All those who are in favor of the amendment will say Aye, contrary-minded No. The Chair is in doubt. All in favor of the amendment will rise. The gentlemen will be seated. All opposed to the amendment will rise. The gentlemen will be seated. The Secretary will announce the result.

The Secretary — Ayes, 93; Noes, 20.

The Chairman — The amendment is carried. The question now occurs upon the amendment offered by Mr. Parsons, which the Secretary will read.

Mr. Marshall — I wish to make this statement. This continues the existing apportionment until there is a new apportionment, making the provision exactly the same as that which we have adopted with regard to the subject.

The Chairman — The Secretary will read.

The Secretary — On page 16, strike out the words "election district" and "election districts" in lines 12, 16 and 17 —

Mr. Parsons — And the brackets — strike out the brackets.

Mr. A. E. Smith — What page?

The Secretary — On page 16, lines 12, 16 and 17. "Election district" and "election districts".

Mr. Parsons — And the brackets, line 12.

The Chairman — The Secretary has not finished reading.

The Secretary — On page 16, strike out the brackets in lines 12 13, 16 and 17.

The Chairman — You have heard the amendment as read by the Secretary. All in favor of the amendment as read will say Aye, contrary No. The amendment is carried. The question now occurs upon the amendment of Mr. Foley. The Secretary will read the amendment.

Mr. Foley — The amendment is rather long and I think I could explain it more briefly than if read.

The Chairman — Well, Mr. Foley, we must have it read. If Mr. Foley will wait until the Secretary has read it.

The Secretary — By Mr. Foley: Amend by striking out Section five, and inserting the following substitute: Section five. On page 12, line 11, Section five: "Members of assembly shall be chosen by single districts and shall be apportioned by the Legislature at the first regular session after the return of their enumeration, among the several counties of the State as nearly as may be according to the number of their respective inhabitants, excluding aliens, and to be in as compact form as possible, and shall remain unaltered until the return of another enumeration, and shall at all times consist of contiguous territory, and each senate district shall contain three members of assembly. The quotient obtained by dividing the whole number of inhabitants of

each senate district, excluding aliens, shall be the ratio for enumeration. No town or no block enclosed by streets or public ways shall be divided in the formation of assembly districts; nor shall any assembly district contain a greater excess in population over an adjoining district within the same senate district than the population of a town or block thereof adjoining such district. The boundaries of an assembly district shall be, so far as practicable, co-terminous with the boundaries of a county. Nothing in this section shall prevent the division at any time, of counties and towns, and the erection of new towns by the Legislature. The assembly district as now constituted and the existing apportionment of members of the assembly shall continue until changed as above provided. Every apportionment by the Legislature shall be subject to review by the court of appeals upon the application of the attorney-general or of any citizen, and such proceeding to review such an apportionment shall have precedence over other causes and proceedings, and if said court be not in session, it shall convene promptly for the disposition of the same. No apportionment shall be valid until the Court of Appeals after such review shall have determined it to be equitable in accordance with the provisions of this section".

Mr. Foley — Mr. Chairman, briefly, this amendment makes the Assembly apportionment exactly similar to the Senate apportionment which the Convention has already adopted. The one-third limitation does not and will not for some time operate to limit the representation in the Senate from New York. But with regard to the Assembly, the rule that every county shall have at least one Assemblyman operates in favor of the smaller counties and against the larger counties. I simply desire to point out that under the next apportionment by the Legislature of 1916, New York county with an increase of two or three hundred thousand population will actually lose three Assemblymen; Erie will lose at least one; St. Lawrence will lose one; Steuben will lose one, and Dutchess will lose one, and it will be accomplished by retaining these arbitrary rules. We work in favor of a county like Putnam, with but 14,000 people, while a member from New York county represents seventy thousand citizen inhabitants. Now if the Senate apportionment is fair when based upon an absolutely equal division of the State into fifty different districts, then the State should be divided likewise into one hundred and fifty Assembly districts, equal in population, and divided regardless of county lines. The forty smaller counties of the State won't have one member each and these counties must be provided for before a further apportionment of members is made. My amendment establishes an Assembly based on fair popular representation.

Mr. Coles — Do you realize the provision in which you state that each Senatorial district shall contain three Assembly districts means at the present time there will be 153 Senators?

Mr. Foley — The Convention has adopted a rule making the Senate representation 50.

Mr. Codes — No. The provision is that each Senatorial district shall contain three Assembly districts. That makes 153.

Mr. Foley — I would like to see the one to three ratio between Senate and Assemblyman preserved. I don't think one Senate district should have but two and another three.

The Chairman — The question occurs upon the amendment of Mr. Foley which the Secretary has read. All in favor of the amendment will say Aye, contrary-minded No. The amendment is lost. The question now occurs upon the amendment offered by Mr. Marshall. The Secretary will read.

The Secretary — By Mr. Marshall: On page 12, line 12, after the word " districts " insert a period and the words " The Assembly districts shall remain as at present constituted until altered as hereinafter provided. They ". Also strike out from line 12, page 12, the word " and ".

Mr. Marshall — I would like to explain it. You will note that we have on page 10 adopted the amendment that " The Senate districts shall remain as at present constituted until altered as hereinafter provided." There is no corresponding provision with regard to Assembly. That is necessary, and our experience has been in this State, that at times there has been a failure to reapportion, sometimes for three or four years after the time they should be. Therefore, there must be a provision made for the continuing of the present apportionment until the new apportionment is made.

The Chairman — The amendment offered by Mr. Marshall is the question before the House. The Secretary has read the same. All in favor of the amendment will say Aye, contrary-minded No. The amendment is carried. The question now occurs upon the amendment offered by Mr. Coles. The Secretary will read.

The Secretary — By Mr. Coles: Page 16, line 27, enclose the period in brackets and insert after the bracket the following: " ; except that no portion of the territory of any county shall be taken from such county and be annexed to or become a part of an adjoining county unless at the general election next preceding such proposed annexation a majority of the duly qualified electors residing in the territory proposed to be so annexed, and also a majority of the duly qualified electors residing in such adjoining county shall have voted in favor of such proposed annexation ".

Mr. Coles — This is along the lines, again, of home rule. It is so that a county shall not lose a portion of its territory and have it annexed to the adjoining county, except with the approval of the people living in the territory affected. Only two days ago when we adopted an amendment —

The Chairman — The Convention will please be in order.

Mr. Coles — To provide for home rule in counties to the extent of making it obligatory that legislation respecting counties should be initiated by the governing body of the county. This obviates any disturbance of the county lines by taking a portion of a county and annexing it to another county unless with the approval of the people of the territory.

The Chairman — The question is on the adoption of the amendment offered by Mr. Coles, which the Secretary has read. All in favor of the amendment will say Aye, contrary-minded No. The amendment is lost.

The Chairman — The question now occurs upon the amendment offered by Mr. A. E. Smith. The Secretary will read.

Mr. A. E. Smith — Before the Secretary reads, I want to say that it is Senator Foley's amendment in another form. That does exactly the thing I sought to do. I sought to strike out the provision that requires every county to have an Assemblyman. In thirty-one counties in the State, according to this present enumeration, with less than 50,000 inhabitants in them, running down as low as twenty, eighteen, and as low as 12,000 inhabitants, and while you continue one Assemblyman for every county New York city can never get more than seventy-two Assemblymen under any process of figuring you use, and my witness for that is my good friend from Syracuse, who attempted to show me how it was possible, and after working for half an hour he agreed with me that it was impossible. I withdraw the amendment. You have passed on the question in Senator Foley's amendment.

Mr. Parsons — I desire to offer an amendment to make this section conform to Section 4, in the respect to which Section 4 was amended.

The Chairman — The Secretary will read the amendment offered by Mr. Parsons.

The Secretary — Page 12, line 17, strike out all after the word "until", and all in line 18, through the period on line 21. And insert the following: "Altered as hereinafter provided. At the regular session of the legislature in each year in which Senate districts shall be altered, such members of the Assembly shall again be apportioned by the Legislature. Assembly districts reapportioned as herein provided shall remain unaltered until the time herein appointed for another reapportionment thereof."

The Chairman — The question is on the amendment offered by Mr. Parsons, which the Secretary has just read. All in favor of the amendment will say Aye, contrary-minded No. The amendment is carried.

Mr. Sheehan — I offer the following amendment.

The Chairman — The Secretary will read the amendment offered by Mr. Sheehan.

The Secretary — By Mr. Sheehan: Amend Section 5, line 13, page 12, by adding after the word "session" the words "following the election of Senators and Assemblymen."

Mr. Sheehan — The object of this amendment is to provide that the apportionment shall be made by a new Senate and Assembly to be elected next year. Under the proposition as reported, Senators already elected and holding over next year take part in the making of the apportionment. The partisan alignments have, therefore, already been made, so that no apportionment could possibly be made that is not satisfactory to the party now in power. This permits the whole question to be submitted to a new Legislature to be hereafter elected by the people.

The Chairman — The question is on the amendment proposed by Mr. Sheehan, which the Secretary has just read. Those in favor will say Aye, contrary No. The amendment seems to be lost and is lost.

Mr. R. B. Smith — The adoption of Mr. Parsons' amendment makes an amendment necessary inasmuch as the State, except in cities of the second class, finds itself, so far as enumeration is concerned, in the same position we were in before. Therefore, in line 21, page 16 — let me state, further, that the enumeration has been taken by blocks only in cities of the first class. Now, the cities of Syracuse, Utica, Schenectady and Albany must be divided next year, and we have no basis upon which to change the relative size of the Assembly districts, except upon the basis of election districts, and unless this amendment is made, we will have to make another enumeration in those cities.

The Chairman — The Secretary will read.

The Secretary — On page 16, line 21, strike out the bracket, and after the word "cities" insert "except cities of the first class." On the same page, line 34, enclose the word "eight" in brackets and after the word "eight" insert "nine". Also enclose "ninety-two" in brackets, and after "ninety-two" insert "fifteen". Same page, line 25, strike out the brackets.

The Chairman — You have heard the amendment. All in favor of the amendment will say Aye, contrary-minded No. The amendment is carried. The question now occurs upon the adoption of the section as amended. All in favor of the adoption of

the section as amended will say Aye, contrary-minded No. The section seems to be carried. It is carried. The question now occurs upon the adoption of the part of the proposed amendment beginning on the 8th line of page 17, which strikes out the language of former Section 7. All in favor of the proposed amendment, so far as it strikes out the language of former Section 7, will say Aye, contrary-minded No. It seems to be carried. It is carried. The question now occurs upon the adoption of the report so far as it strikes out the language contained in former Section 8, being part of the report printed on page 17, from line 15 to line 22, inclusive. All in favor of the proposed amendment, so far as it strikes out the language contained in former Section 8, will say Aye, those opposed No. It seems to be carried. It is carried. The question now occurs on the adoption of the section of the report relating to the unnumbered section beginning at line 23 on page 17 and ending on line 2, page 18. All in favor of the report, so far as it relates to this unnumbered section as stated, will say Aye, contrary No. It seems to be carried, and is carried. The question occurs upon the adoption of the report so far as it relates to the section of the report, beginning at line 3 and ending at line 8. All in favor of the adoption of the report, so far as it relates to this section will say Aye, contrary-minded No. It is carried.

Mr. Wickersham — Now the article, as amended.

Mr. Baldwin — Mr. Chairman, I now move to reconsider the action of the Committee of the Whole in the approval of Section 1, for the purpose of offering the following amendment.

Mr. D. Nicoll — I understand this amendment was reserved by consent.

Mr. Baldwin — After the word "Assembly" that we insert the following language: "Except as herein otherwise provided." Now, the purpose of the amendment — just a word will explain it — is this: This provision provides that the legislative power in this State shall be vested in the Senate and Assembly. Now, by our home rule article we have vested certain legislative functions in the local legislative bodies of the cities. We have given them power to amend their charters and to repeal certain special laws relating to local self-government. These powers, however, are given "subject to the Constitution." In order to make the document consistent, we should adopt this amendment. The same legislative power cannot reside in two places. We have given certain legislative power directly to the cities. The balance of the legislative power remains in the Legislature. Therefore, in my opinion Section 1 should read, "The legislative power of this State shall be vested in the Senate and Assembly, except as herein

otherwise provided". For that reason I move to reconsider the matter. I may say there are other reasons why this should be done.

Mr. Steinbrink — Are not you misinterpreting the language of that first sentence because this says, "The legislative power of this State shall be vested".

Mr. Baldwin — Yes, sir.

Mr. Steinbrink — Now, that does not interfere with your home rule, because your home rule vests the power in the local or municipal assembly.

Mr. Baldwin — The objection to the 1913 home rule bill was expressly based on the fact that the people in their sovereign capacity had vested their rights in the Senate and Assembly. Now, we cannot divide the right —

Mr. Wickersham — Why not?

Mr. Baldwin — In dividing it we cannot place it first in the Senate and Assembly and then by a separate article place it in the city. The grant to the city is made "subject to this Constitution". Because with this limitation, if you leave it as it is, you have left the power entirely in the Senate and Assembly, if you apply a strict construction.

Mr. Stimson — Would not the specific provisions of the home rule article control the provisions of this section?

Mr. Baldwin — Mr. Chairman, I should like to answer Mr. Stimson's question. In my judgment, as a matter of legal interpretation these two provisions are inconsistent with each other. One section provides: "The legislative power shall be vested in the Senate and Assembly", while the other section provides: "Each city shall have exclusive power * * * subject to this Constitution". If the legislative power as a matter of fact rests in the Legislature, then a second grant of such power cannot be delegated to the city.

Mr. Marshall — Mr. Chairman, this matter was fully discussed here and I think every one was satisfied that it was not necessary to make this amendment, and I call attention to Section 27, of Article III, under which we have been living for seventy years, which reads: "The legislature shall, by general laws, confer upon the boards of supervisors of the several counties of the state such further powers of local legislation and administration as the legislature may, from time to time, deem expedient",—

Mr. Baldwin — Is there not a clear distinction between the two provisions? The present Constitution says, "The Legislature may delegate * * *" The provision which you have now adopted says, "The power shall be vested in the city". The

people in the first case gave to the Legislature the power to delegate; now the people are to give the power directly to the city.

Mr. Marshall — The sections read together would mean exactly what you say, that the legislative power given to the cities is vested in the cities and the legislative power which remains, all over and above and beyond that, remains in the Legislature. I think we would be opening the door to a very great danger if we added the words we are now proposing because we do not know where they will lead us to.

Mr. Root — May I say, Mr. Baldwin, that this subject is one which is much discussed in private conversation. I thought at one time that the proposal you made ought to be adopted, but on further reflection it seems to me it is wholly unnecessary. We say in the Constitution, and have said, certainly since 1846, the executive power shall be vested in the Governor, and then we go on and elect a number of people wholly independent of the Governor, who exercise executive power. We say the legislative power shall be vested in the Senate and Assembly, and then we go on to vest portions of the legislative power in local authorities. All the custom of the State, the settled practice of the courts, is to read these provisions of the Constitution together, and to consider the specific provisions as by their very insertion in the Constitution creating exceptions to the general grant of power. I think we would better follow the old practice.

The Chairman — The question is on the motion of Mr. Baldwin to reconsider the action of the Committee in adopting Section 1. All who are in favor of the motion will say Aye, contrary-minded No. The motion seems to be lost and is lost.

Mr. Sharpe — Mr. Chairman, I want to move to reconsider the vote by which Section 8 was adopted. My reason for it is this, the second clause of that section provides that "no person shall be eligible to the Legislature who at the time of his election is * * * a member of Congress * * * or an officer under any city government. And if any person shall, after his election as a member of the legislature, be elected to Congress or appointed to any office, civil or military, under the government of the United States or under any city government, his acceptance thereof shall vacate his seat". Now, if the statutes of the United States should prevent him from serving both as a legislator here and holding office even in the government of the United States, I would have nothing to say. But it seems to me this should be changed; we should not have "in the legislature" here — members of city governments or any other officers in the State of New York.

The Chairman — Mr. Sharpe moves to reconsider the action of the Committee in adopting that part of the General Order we

have under consideration, which strikes out Section 8 as it exists in the present Constitution. The language printed on page 17, from line 15 to line 22. All in favor of reconsidering this action will say Aye, contrary-minded No. The motion seems to be lost. It is lost.

Mr. Wickersham — Mr. Chairman, I move now the adoption of the article as amended.

Mr. Marshall — Mr. Chairman, I move reconsideration of the vote by which we strike out Section 8, to this extent only, restoring lines 19, 20, 21 and 22, beginning the line with a capital letter, " If any person shall, after his election as a member of the legislature, be elected to Congress, or appointed to any office, civil or military, under the government of the United States or under any city government, his acceptance thereof shall vacate his seat ". There should not be in this State a member of the Legislature who at the same time should be a member of Congress or a member of the city legislature. The remaining matter may be left out, but I hope we will reconsider the provision so far as I have read it.

Mr. Wickersham — I think that ought to be adopted, Mr. Chairman.

The Chairman — The motion is that the Committee reconsider the vote by which it elided Section 8 of the present Constitution, page 17, lines 15 to 22, so far as it was elided, the first sentence thereof, right through the second sentence thereof. Is that correct, Mr. Marshall?

Mr. Marshall — Yes. And the word " if " should begin with a capital letter.

The Chairman — First we shall have to consider the vote so far as it relates to the election, and the language beginning at the beginning of line 19 and the words " If any person shall " and ending with the words " vacate his seat ".

The Chairman — All in favor will say Aye, contrary-minded No. The motion seems to be carried. It is carried.

Mr. Marshall — Now I move, Mr. Chairman, that the brackets be inserted after the word " and " page 17, line 18.

The Chairman — The motion is that the word " and ", a bracket in Section 8 be inserted after the word " and " at the end of line 18, and that the word " if " at the beginning of line 19 begin with a capital letter, and a bracket be stricken out at the end of line 22.

Mr. Doughty — Mr. Chairman, may I ask for information. This is an important matter. If it be held that a commissioner of deeds is a state officer, and if an assemblyman be appointed a commissioner of deeds, that would deprive him of his office as

assemblyman. What I would like is to have it read into the record that a commissioner of deeds is not a city officer under the provision of this section.

Mr. J. G. Saxe — Mr. Chairman, I want to make one suggestion: Under this clause a Congressman can run for election, be a commissioner of deeds or notary public and enjoy the position of member of the Legislature in all its qualifications, whereas if he does not have those qualifications and gets them after election, he cannot qualify.

Mr. Marshall — He cannot hold two offices at the same time.

Mr. J. G. Saxe — He can; he would hold them already.

The Chairman — You have heard the question before the Committee. All who are in favor of the motion will say Aye, contrary-minded No. It is carried.

Mr. Wickersham — Mr. Chairman, I move the adoption of the article as amended.

The Chairman — The question occurs on the adoption of the article as amended. All in favor of the adoption of the article as amended will arise. The gentlemen will be seated. Those who are opposed will rise. The Clerk will announce the result.

The Secretary — Ayes 82, noes 36.

The Chairman — The section is adopted as amended.

Mr. Wickersham — Mr. Chairman, I move the Committee do now arise and report the article favorably as amended to the Convention.

The Chairman — It is moved that the Committee do now rise and report the article as amended favorably to the Convention. All in favor will say Aye, contrary-minded No. It is carried.

(The President resumes the chair.)

The President — The Convention will come to order.

Mr. Sears — As chairman of the Committee of the Whole I beg to report that the Committee of the Whole has had under consideration the Special Order which is General Order No. 67, has amended the same, has adopted the same as amended, and has instructed us to report it favorably to the Convention as amended.

Mr. Sheehan — Mr. President, I desire to move to disagree with the report of the Committee of the Whole and that this measure be recommitted to the Committee of the Whole with instructions to strike out the enacting clause, and on that I demand the Ayes and Noes.

Mr. Wickersham — A point of order, Mr. President: The question arises on the motion to concur with the report of the Committee of the Whole.

The President — It is true the question arises upon a motion to

agree with the report of the Committee of the Whole, but that may give place to a motion to disagree and recommit, not upon a simple motion to disagree, but by moving to disagree and recommit. The question is on Mr. Sheehan's motion. Is the demand for Ayes and Noes seconded?

Mr. Foley — Mr. Chairman, I desire to move to amend the motion and I hope the maker of the motion will accept my amendment. I desire to move to amend by adding the clause that the Convention disagree in so far as the proposal of Mr. Justice O'Brien and my proposal have been included in the report, so that that will limit the report.

Mr. Sheehan — That can be made.

Mr. Wickersham — Mr. President, I move to lay the gentleman's motion on the table.

Mr. Sheehan — If you do that, you lay the whole thing on the table.

The President — Will Mr. Sheehan withhold his demand for the Ayes and Noes long enough to yield for Mr. Foley's amendment? Does Mr. Sheehan accept Mr. Foley's amendment?

Mr. Sheehan — I don't know that I quite understand it.

The President — The question is on Mr. Foley's amendment.

Mr. Foley — Mr. President, he may accept it if I have an opportunity to explain what it is: I desire to limit the vote to a single issue, as to the apportionment and not as to the Legislature's qualifications.

Mr. Sheehan — I am willing to accept that.

Mr. Wagner — Mr. President, may I make a suggestion to Governor Sheehan, if I may, that he change his motion to read as follows: That the bill be recommitted to the Committee of the Whole with instructions to amend by substituting in Section 4 the proposal of Judge O'Brien and report forthwith as amended? That will bring the apportionment question squarely before us.

Mr. Sheehan — I accept that motion.

The President — Is the demand for Ayes and Noes seconded? It is, by a sufficient number. The gentlemen will take their seats. The question is on the motion to recommit to the Committee of the Whole with instructions to report forthwith amended by substituting the proposal of Mr. Morgan J. O'Brien in lieu of Section 4. All in favor of the motion will answer Aye as their names are called, and all opposed will answer No. The Secretary will call the roll.

The President — The Chair will ask the gentlemen to remain silent and quiet so that the call can be heard and the responses can be heard.

Those who voted in the affirmative were: Messrs. Ahearn, Baldwin, Bernstein, Byrne, Dahm, Daly, Donnelly, Dooling, Drummond, Dykman, Eisner, Endres, Eppig, Fogarty, Foley, Frank, Griffin, Haffner, Leary, Mann, Nicoll, D., O'Brien, M. J., Potter, Ryan, Saxe, J. G., Schoonhut, Sheehan, Shipman, Slevin, Smith, A. E., Smith, T. F., Stanchfield, Unger, Wafer, Wagner, Ward, Webber, C. A., Weed.

Those who voted in the negative were: Messrs. Adams, Aiken, Angell, Austin, Bannister, Barrett, Baumes, Bayes, Beach, Bell, Berri, Bockes, Brenner, Bunce, Buxbaum, Clearwater, Clinton, Cobb, Coles, Cullinan, Curran, Deyo, Dick, Doughty, Dow, Dunlap, Dunmore, Fancher, Fobes, Franchot, Gladding, Hale, Heaton, Johnson, Jones, Landreth, Latson, Law, Leggett, Lennox, Lincoln, Linde, Lindsay, Low, McKinney, Mandeville, Martin, L. M., Marshall, Mathewson, Mealey, Meigs, Mereness, Nixon, Nye, O'Brien, J. L., Owen, Parker, Parmenter, Parsons, Pelletreau, Phillips, J. S., Phillips, S. K., Reeves, Rhees, Rodenbeck, Rosch, Ryder, Sanders, Sargent, Schurman, Sears, Sharpe, Smith, E. N., Smith, R. B., Standart, Steinbrink, Stimson, Stowell, Tierney, Tuck, Van Ness, Weber, R. E., Westwood, Wheeler, White, C. J., Wickersham, Winslow, Wood, Young, C. H., Young, F. L., President.

When Mr. Quigg's name was called, he said: Mr. President, I wish to be excused from voting. I think this has got to come sooner or later, and I don't think it makes much difference whether it comes now or some other time, and I ask to be excused from voting.

The President — The vote on this question is 38 in the affirmative and 91 in the negative, so the motion is lost. All in favor of agreeing to the report of the committee will say Aye, contrary No. The Ayes have it. The report is agreed to and the bill goes to the order of third reading.

Mr. Wickersham — Mr. President, I have a letter which I have just received from the Governor of the State, which I ask to have read before we adjourn.

The Secretary —

Executive Mansion, Albany, September 3, 1915.

Hon. George W. Wickersham, Constitutional Convention, Albany, N. Y.

Dear Mr. Wickersham — I understand that the Convention today is to pass upon the resolution offered by the Committee on Governor and Other State Officers and that such resolution contains a provision for the increase of the Governor's salary from $10,000 to $20,000, said increase to take effect January 1, 1916.

While I believe that the proposed increase is right and in the public interest, it seems to me that the section of the present Constitution to the effect that the salary of no State officer shall be increased during the term for which he is elected is eminently proper and I urge upon the Convention that the proposed resolution shall be amended so as to provide that the increase in the salary of the Governor shall become effective on January 1, 1917. Very truly yours, Charles S. Whitman.

Mr. Wickersham — Mr. President, I move that the Convention take a recess until 3 o'clock — until a quarter of three — which will give us a good hour.

Mr. J. L. O'Brian — Mr. President, I move to amend that, that the Convention adjourn until 2:30 because of press of business.

Mr. Wickersham — We have been all continuously busy since 10 o'clock, I think we ought to take a little longer.

Delegates — Three o'clock, 3 o'clock.

Mr. Wickersham — I will say 3 o'clock.

The President — The Chair is endeavoring to ascertain what is the true voice of the people. What is the motion now?

Mr. Wickersham — That we take a recess until 3 o'clock.

The President — All in favor will say Aye.

Mr. Wickersham — Mr. President, I heard the voice of the people.

The President — The motion is carried and the Convention stands at recess until 3 o'clock.

Whereupon, at 1:50 p. m., the Convention took a recess until 3 o'clock, p. m., of the same day.

AFTER RECESS—3:00 P. M.

The President — The Convention will be in order.

Mr. Wickersham — Mr. President, I suggest the absence of a quorum and ask that the roll be called.

The President — The Secretary will call the roll.

Upon the call of the roll the following delegates responded: Messrs. Adams, Aiken, Allen, F. C., Angell, Austin, Baldwin, Bannister, Barnes, Barrett, Baumes, Bayes, Beach, Bell, Bernstein, Berri, Betts, Blauvelt, Bockes, Brenner, Bunce, Buxbaum, Byrne, Clinton, Coles, Cullinan, Dahm, Daly, Dennis, Deyo, Dick, Donnelly, Doughty, Dow, Drummond, Dunlap, Dunmore, Dykman, Eggleston, Eisner, Endres, Eppig, Fancher, Fogarty, Foley, Ford, Franchot, Frank, Greff, Griffin, Haffen, Hale, Harawitz, Heaton, Johnson, Jones, Kirby, Landreth, Latson, Law,

Leary, Leggett, Lennox, Lincoln, Linde, Lindsay, Low, McKean, Mandeville, Mann, Martin, F., Martin, L. M., Marshall, Mathewson, Mealey, Meigs, Mereness, Nicoll, C., Nicoll, D., Nixon, Nye, O'Brian, J. L., O'Brien, M. J., Ostrander, Owen, Parmenter, Parsons, Pelletreau, Phillips, S. K., Potter, Reeves, Rhees, Richards, Rodenbeck, Rosch, Ryan, Ryder, Sanders, Sargent, Saxe, J. G., Schoonhut, Schurman, Sears, Sharpe, Shipman, Slevin, Smith, E. N., Smith, R. B., Smith, T. F., Standart, Steinbrink, Stimson, Stowell, Tuck, Van Ness, Wafer, Wagner, Ward, Waterman, Webber, C. A., Weber, R. E., Weed, White, C. J., Wickersham, Wiggins, Winslow, Wood, Young, C. H., Young, F. L., President.

The President — One hundred and twenty-eight delegates having answered to their names, a quorum of the Convention is present.

The Secretary will read the title of the first order on third reading.

The Secretary — No. 856, by the Committee on Public Utilities: To amend Article V of the Constitution by adding a new section thereto relating to public service commissions.

Mr. Hale — Mr. President, I move that that bill be recommitted to the Committee on Public Utilities, because the substance, and, in fact, the words are incorporated in the bill of the Committee on Governor and Other State Officers.

The President — It is moved that the bill be recommitted to the Committee on Public Utilities, the same having been included in the bill already adopted. All in favor will say Aye, contrary No. The motion is agreed to.

The Secretary will read the title of the next order.

The Secretary — No. 858, by the Committee on Governor and Other State Officers: To amend Sections 1 and 4, Article IV, of the Constitution.

The President — The bill is in the Convention, open for debate under the rules.

Mr. Wickersham — Mr. President, I offer an amendment in order to comply with the request preferred by Governor Whitman in the letter which was read just before we adjourned.

The Secretary — By Mr. Wickersham: On page 1, line 10, before the words "the governor" insert "from and after the first day of January, one thousand nine hundred and seventeen".

The President — Do the gentlemen desire to debate?

The question is upon the amendments which will provide that the Proposed Amendment shall not take effect until after the expiration of the term of the present Governor. All in favor of recommitting to the Committee of the Whole with instructions to

amend as indicated, and report forthwith will say Aye, contrary No. The Chair is in doubt. All in favor of the motion will rise and remain standing until counted. The gentlemen will be seated. All opposed will rise and remain standing until counted. The gentlemen will be seated. The motion is manifestly carried. Is there any further debate upon the bill? There being no further debate, the debate is closed. The bill will be laid aside for reprinting before the text is read.

Mr. Wickersham — I move the further order of third reading be postponed until eight-thirty this evening.

The President — All in favor will say Aye, contrary No. The motion is agreed to. The Convention will go into Committee of the Whole for the consideration of the Special Order of the day, and will Mr. Foley take the Chair?

(Mr. Foley takes the Chair.)

The Chairman — The Convention is now in Committee of the Whole on the Special Order of the day, according to the rules reported this morning, General Order No. 69. The Clerk will read the title.

The Secretary — No. 857, General Order No. 69, by the Committee on Governor and Other State Officers, repealing Section 5, Article V, and creating a new section to be properly numbered.

Mr. Rhees — The purpose of this amendment which is submitted by the Committee on Governor and Other State Officers is to make Section 5 of Article V of the Constitution, which deals with the commissioners of the land office, of the canal fund and the canal board, accord with the new arrangement of the officials of the State administration which has been adopted by the Convention, and also to make a slight modification in that section. At the present the commissioners of the land office are the Lieutenant-Governor, the Speaker of the Assembly, the Secretary of State, the Comptroller, the Treasurer, the Attorney-General and the State Engineer and Surveyor. By the provisions of the bill which is proposed, these commissioners will be the Lieutenant-Governor, the Speaker of the Assembly, the Secretary of State, the Attorney-General, the Comptroller, the Treasurer and the Superintendent of Public Works — the same commissioners as are named in the present Constitution, except that the Superintendent of Public Works is substituted for the State Engineer and Surveyor, whose office will not any longer exist if the Constitution is adopted. The commissioners of the canal fund, according to the present Constitution, are the Lieutenant-Governor, the Secretary of State, the Comptroller, the Treasurer and the Attorney-General. Our proposal makes the commissioners of the canal fund identical with the commissioners of the land office. The difference between our

proposal and that of the existing Constitution is that the Speaker of the Assembly and the Superintendent of Public Works are added to the commissioners of the canal fund. According to the present Constitution the canal board consists of the commissioners of the canal fund, the State Engineer and Surveyor and the Superintendent of Public Works. Our proposal makes the commissioners of the land board identical with the commissioners of the land office and the commissioners of the canal fund; the State Engineer and Surveyor becomes the Superintendent of Public Works and the canal board is increased by the addition of the Speaker of the Assembly. In the opinion of the Committee this identification of the three boards will be of advantage. They are practically identical to-day — the difference being very slight as we have indicated; and it is the opinion of the Committee that bringing these boards into one and assigning to them specifically the functions assigned in the present Constitution to the different commissions named in the Constitution will, on the one hand, simplify the business that these commissions are charged with, and on the other hand avoid any embarrassment or confusion that might result from change of titles or functions because many of the statutes of the State and other articles of the Constitution assign special duties to these various boards and commissions. The Committee moves the adoption of the amendment.

Mr. Harawitz — This is a new section, as I understand it, and I think it ought to be printed in italics.

Mr. Rhees — It should be printed in italics.

Mr. Harawitz — It is printed wrong as it is. I simply want to call the Committee's attention to it.

Mr. Clinton — Part of it ought to be in italics. I wish to say that the amendment of this section, Article V, Section 5, of the Constitution, was considered by the Canal Committee. We reported it to the Committee on Governor and Other State Officers; we reported an amendment substantially the same as this. But in our amendment we simply left out the commissioners of the canal fund. Their functions are — practically nothing, actually. It was thought — it was found by the Committee on Governor and Other State Officers, in order to furnish some check, that the amendment should be worded as it is at present, taking the entire matter to the canal board. That seems to me to be a wise change. The amendment of the section not only betters it but it makes it conform, as we must make it conform, to the amendment which has been passed by this Convention, introduced by the Committee on Governor and Other State Officers, recognizing the Department of State.

Mr. Stimson — The chief importance of this as I understand

it is that it preserves the powers and functions and existence of three boards who exercise certain supervisory functions over the State Comptroller. The commissioners of the canal fund have the approval of the investment of the sinking funds made by the Comptroller relating to canals, and the canal board has the approval of contracts made by the Superintendent of Public Works in regard to canals. Many members have asked me at different times whether the reorganization which was finally enacted last night in the grouping of the State officers wiped out the powers of these boards, and this particular provision which is now before the Committee is an affirmation by re-enacting this, that it does not; it continues those boards. Of course, their powers are statutory and presumably will remain in the future as they have been in the past, but this amendment continues the existence of those boards whose existence the Committee on Governor and Other State Officers deemed to be very important, in that they continued this supervisory function over the investment of the sinking fund, and the contracts in regard to all public work.

The Chairman — The pending motion is upon reporting this amendment to the Convention. As many as are in favor will say Aye, contrary No. The Ayes seem to have it; the Ayes have it, and the bill is to be reported. The Secretary will read the title of the next Order.

The Secretary — No. 849, General Order No. 63, by the Committee on the Bill of Rights: To amend article one of the Constitution generally and to repeal section one of article seven of the Constitution and to amend section nine of article eight of the Constitution.

Mr. Marshall — Mr. Chairman, the Committee on Bill of Rights had submitted to it upwards of eighty different measures, covering a great variety of subjects and a great many phases of the same subject. Very careful consideration was given to every measure submitted and full hearings were given to many members of the Convention and to many citizens of the State with regard to the subjects which were under consideration. The Committee has proposed a measure which covers recommendations of amendments with regard to fifteen subjects, and it is regrettable that the time accorded for the consideration of these measures, which are, all of them, important, is so very brief as three hours. I shall try to state as briefly and succinctly and clearly as possible the nature of the proposals which are contained in this measure and the reasons which have induced the Committee to recommend them. I would prefer not to be interrupted in the course of my statement, but am very desirous of answering any questions at the proper time that may be addressed to me with regard to any

one or all of these Proposed Amendments. I shall then take them up, first, the amendment which is proposed on lines 5, 6 and 7 of page 1, which proposes to amend General Order No. 63 — proposes to amend Section 4. I shall read it with an amendment which the Committee will propose at the suggestion of Mr. Latson in the Committee on Military Affairs. As it will be amended it will be as follows: The privilege of the writ of habeas corpus shall not be suspended unless when, in cases of rebellion or invasion, the public safety may require its suspension; nor shall any military tribunal exercise jurisdiction over a civilian unless engaged in military or naval service while the regularly constituted state courts are open to administer justice. In recent years there have occurred in the various States of the Union uprisings, insurrections on a very small scale, and as a result of them the military arm of the government has been appealed to. On a number of occasions, especially recently in the State of West Virginia, the military department of the government sought by means of court-martial to try civilians for acts committed in the course of the so-called uprising at times when the civil courts were open for the transaction of business, and it was thereby attempted to extend the arm of the military tribunals over the entire State for the purpose of haling before them persons who had been guilty of acts committed in breach of the public peace and equity. This particularly was the case in West Virginia two years ago where a very serious condition arose, where there was a conflict between the civil and the military tribunals. I regret very much that I cannot go into the details. They can be found in the case of Nance vs. Brown 71 W. Va. 519. The matter was of such great importance and moment that in an address before the State Bar Association at its annual meeting in New York, on January 13, 1914, Judge Cullen, shortly after he retired from the chief-judgeship of the Court of Appeals, called special attention to the situation and sounded a note of warning against what might become a serious abuse in our public life. It is very interesting to note that this subject has recently been considered in the English parliament in connection with a bill which was before Parliament in regard to courts-martial during the present strenuous times which are prevailing in England, and the suggestion was made with regard to extending the authority of courts-martial. I cannot read the entire debate. I can only call attention to the remarks made by three great law lords, Lord Loremburn, Lord Halsbury, and by Lord Bryce as well. Lord Loremburn says: "It is a very dangerous thing to take away right of trial and hand it at your own discretion to military officers, even though the penalty of death may not be inflicted. * * * If it could be shown that

the courts of law were not available or that they were not deserving of confidence then I could understand this power being asked for, but I do not think you ought to give this power during the time when the courts are available and are quite as able to do justice as they have been at any period during the last hundred years." Lord Halsbury said: "I see no necessity for getting rid of the fabric of personal liberty that has been built up for many generations. Although there are rights which should not necessarily be insisted upon in time of war, it seems to me that this wholesale sweeping away of them is greatly to be deprecated. I hesitate very much to surrender all the liberties and protections which have been built up, as I say, for many generations, just because at this particular time there are some things that you may wish to do more quickly than at any other time." Lord Bryce said: "Your Lordships will remember the remarkable case of Lord Kilwarden and Wolfe Tone. When Wolfe Tone having been taken prisoner as an enemy in the service of France, was tried by court-martial and was going to be put to death, a writ of habeas corpus was moved in the Court of King's Bench in Ireland, and Lord Kilwarden, the illustrious chief justice at that time, said as they were not in a state of civil war and there was no enemy in the country the ordinary courts of law were in control. He issued a writ immediately for the delivery of the body of Wolfe Tone, and declared that he would sit there until a return was made by the court-martial in whose custody Wolfe Tone was. I mention this as a remarkable instance of the sense that was entertained 116 years ago of the great value of this right which a British subject has of being tried by the ordinary courts of the land." The Supreme Court of the United States had occasion to pass upon this question with regard to the case of Ex parte Milliken, 4 Wallace, page 43, a case which was decided immediately after the civil war when feeling ran high. There the court laid down the principle that a citizen not connected with the military service and resident of a State where the courts are open and in the proper exercise of their jurisdiction cannot even under a privilege of a writ of habeas corpus, if suspended, be tried or sentenced otherwise than by the ordinary courts of law. As originally drafted, we merely referred to civilians. Attention was called to the fact, however, that there are people in the military and naval service of the State who are civilians but who at the same time are performing functions in connection with the military arm of the government, and for that reason, in order to cover those cases, we have adopted that amendment.

The next proposition is on page 2. "On a conviction for a

crime now punishable by death, the jury may by its verdict impose either the death penalty or life imprisonment, and in the latter event no pardon or commutation shall be granted unless the innocence of the person convicted be established". The committee, with practical unanimity, with one dissenting vote, decided against the abolition of capital punishment, but it believed it was desirable to bring before the Convention the question whether there should be any modification of the rule which now exists. By a bare majority it decided that it would be desirable to permit a jury in a capital case to determine whether the death penalty should be inflicted; or, if not, that then life imprisonment should be the penalty of the crime, and that in such a case there should be no pardon or commutation of sentence except in the case of established innocence. There is on the statute books of 27 states in the Union a provision which permits a jury, in a case otherwise capital, to determine whether or not the death penalty should be inflicted or life imprisonment should be the punishment for such an offense. I shall not devote any time to an elaboration of this proposition except to lay it before the Convention so that it may deal with it as it deems best. The next proposition is this: "Imprisonment in civil actions is forbidden except for contempt of court, on final judgments for a penalty, for fraud, for willful injury to person or property or for domestic servants' wages". Imprisonment for debt in the established sense of the word in cases arising on contract was in large measure abolished in this State by the passage of what is known as the Stillwell act in 1831. It is interesting to know that one of the great men in your history who was most instrumental in the passage of that act was Thurlow Weed. From that time on there has not been in this State imprisonment for debt in the ordinary sense, but there are, nevertheless, a great many cases in which people are arrested and imprisoned for what is really a debt. The committee had its attention called to this subject by a number of gentlemen in the Convention — Judge Brenner, Mr. Buxbaum, and Mr. Latson, among others — who proposed in various forms to abolish imprisonment for debt. It also had the matter presented to them by Mr. Francis Lynde Stetson, representing the State Bar Association, which has had this matter under consideration for the last ten years. The subject was first brought to its attention by Judge Hughes in an address before the Bar Association in 1905. In a most admirable article which analyzed our law upon the subject, the various statutes which pertain to it, he gave good reasons why there should at least be a relaxation of the strict rule which was still in force.

The committee decided that there should be no imprisonment

for debt by mesne process, that is, by an order of arrest before judgment; that there should be a hearing and a determination of the case on the merits before there might be imprisonment in any case. It would be a great injustice, and many such cases of injustice have occurred where people have been arrested for the purpose of extorting from them money, and when the case was finally tried the plaintiff either did not appear or was unsuccessful. Our first principle, therefore, is that there must be no arrest except for contempt of court which necessarily speaks for itself, because it is necessary to maintain that right, in order to maintain the jurisdiction of the court and its powers; or on final judgment for certain designated cases. There are cases of action for a penalty; those are cases which are tried in the name of the people for the purpose of enforcing an obligation created by statute and those suits are resorted to in many instances because it is difficult to get a jury to consider cases of misdemeanors seriously but they will consider seriously actions for penalties, and the policy will therefore be enforced. Cases of fraud; that speaks for itself. Cases of willful injury to persons or property; that rule is also clear and reasonable. Then we added "or for domestic servants' wages" in order to carry out a provision which has been on our statute books for many years, especially in the city of New York, where it has been found that there has been much suffering occasioned to servants by the failure of their employers to pay them, and it has been believed that that case should still be recognized. That was added at the instance of Judge Olcott, who is not here to-day, but who was very urgent and eloquent in the enforcement of that fact. The next amendment is in Section 6. The first change is merely formal, in order that the section will not be as misleading as it now is. I will not dwell upon that, but will go to the part of the section which begins on line 16 and ends in the middle of line 21 on page 2. Having first provided that no persons shall be held to answer for capital or other infamous crime unless on the presentment of an indictment of a jury, it proceeds: "No person shall be held to answer for a capital or otherwise infamous crime unless on presentment or indictment of a grand jury. Any person may, however, in the manner prescribed by law after examination or commitment by a magistrate, waive indictment and trial by jury on a charge of felony punishable by not exceeding five years' imprisonment, all subsequent proceedings being had by information before a superior court of criminal jurisdiction or a judge or justice thereof". This clause, as well as the one in regard to imprisonment for debt, was considered by the Judiciary Committee in conjunction with the Committee on Bill of Rights and both

committees were in favor of these measures. Now, to explain this clause. It was brought to the attention of the committee that in many, many cases men are arrested on a charge which is a charge of felony. Wherever there is such a charge, it is necessary to find an indictment and the prisoner has a right to trial by jury, but sometimes the grand juries do not sit for months after the man has been arrested, and sometimes the defendant is perfectly willing to have his case tried at once without the formality of an indictment or without a jury.

It is, therefore, in the interest of speedy justice that these cases, which are cases of minor felony, shall be promptly disposed of, and we have provided, therefore, that in cases where the prisoner has been committed by a magistrate, or has had an examination, that he may waive indictment, and he may waive trial by jury, but in such cases all subsequent proceedings are to be had, not before a magistrate, but before a superior court of criminal jurisdiction, or the judge or justice of such court. Our attention was called to this proposal by Magistrate Noonan of Buffalo, and by a Board of Magistrates, who had given this matter much consideration, and our attention was called to the fact that in Canada, where indictment and right of trial by jury exist in the same sense as they exist here, that in 90 per cent of the cases there is this waiver of indictment and waiver of trial by jury. And it has worked to the satisfaction of all concerned, that there is speedy justice, satisfactory justice, and men who would otherwise languish in prison for months and months before they could have their cases come up for a hearing are either discharged or sent away on their own recognizance, or let out on probation, or sent to reformatories, are thus saved from the delays and unpleasantness incident to the proceedings which now prevail. Our attention was called to a case of a young man in Wyoming county, who was arrested and charged with forging a check for three dollars, and who had to wait five months before a grand jury met after his arrest, and that case could have been easily disposed of under such a provision as we have indicated, and every lawyer who has had the experience knows how desirable it is, how much it would aid in the administration of justice if such a provision as we suggest were adopted. The next provision is to be found in lines 23 and 24 and provide that: "In any trial in any court whatever the party accused shall be allowed to appear and defend in person and with counsel as in civil action, and shall have the right to at least one appeal". Now, ordinarily, a man charged with a crime has a right of appeal, but the difficulty is that in minor courts, magistrates' courts, there is no appeal as a matter of right. It is necessary to have the appeal al-

lowed, and it is in those cases, sometimes, that the greatest injustice is done; where the rules of law are more apt to be overlooked and slighted, where the man, the small man, may be unable to give expression to his defense or to present his case in the proper manner; and it is felt that in such a case, or in any case, there shall be a right to at least one appeal in a criminal case. That amendment was proposed by Mr. Harawitz and the committee was very much in favor of it. And then we have also on line 2, page 3, the provision that, after providing that no person shall be deprived of life, liberty or property without due process of law — we have added the words which are found in the Fourteenth Amendment of the Federal Constitution and in other Constitutions of the States of the Union, " nor be denied the equal protection of the laws ". It has been felt that it was desirable to make our Constitution in this regard uniform with the Constitution of the United States. The next amendment is on page 3, lines 4, 5 and 6.

After providing that " nor shall private property be taken for public use without just compensation " it is provided " property to the extent damaged by change of grade or the building or maintenance of a permanent structure in, over, or under an abutting highway shall be deemed to be taken ". In many Constitutions of the States of the Union, the provision of the fundamental law is that " Private property shall not be taken, or injured, or damaged in connection with public use without just compensation ". Our Constitution simply uses the word " taken ", and that has been held to mean a physical taking. However, it has been found that a large number of cases arise where more serious damage is done by injury to property, where there is no actual taking, than where there is actual taking. For instance, there are changes of grade upon streets which have been improved and where the title to the street is in the municipality and not in the adjoining owners. None of his property is, therefore, taken, and he therefore, under the present law, cannot get any damages. In the city of New York a few years ago there was constructed a viaduct that practically filled up the street; it was the subject of consideration in the Court of Appeals in the case of Sauer against the City of New York, and which afterwards went into the Supreme Court of the United States, where, by a divided court, it was held that no remedy could be had in such instances, and this language is intended by a very carefully framed phraseology, to permit the owner of the property thus damaged by the change of grade or the building and maintenance of a permanent structure in, over or under an abutting highway, to recover as his property shall be deemed to be taken. It is the owner of land whose land abuts upon that

highway who can be injured, and, therefore, the classification is necessarily circumscribed. I might say that when this question was before the Committee, Mr. Chairman, Mr. Jerome J. Squires, representing the corporation counsel of New York city, was before the Committee and he admitted that this was a proper case for constitutional provision. The next change proposed is to be found on page 3, Section 7, beginning with line 9. That provides, that section, the old part of the section, relates to the manner in which compensation is to be ascertained when private property is taken for public use, and under the present statute, the present Constitution, it is an ascertainment by the Supreme Court with or without a jury, but not with a referee, or by any less than three commissioners appointed by a court of record, as shall be prescribed by law. It has been found that great abuses have arisen, especially in the First and Second Judicial Departments, in respect to the proceedings before the three commissioners. If I had the time I think I could harrow your souls with the recital of the gross wrongs which have been perpetrated in connection with these commissionerships. We have had called to our attention cases in which proceedings have been continued before such commissioners for ten years, during all of which time the owner of property has been kept out of his own; his property has been taken into possession by the public authorities; his house has been razed to the ground; his payment is postponed until the proceedings are terminated. The expenses of these proceedings are terrific, running into the millions of dollars. These commissionerships have been given to favorites, and they are not distributed by an equal hand.

Sometimes we find that one man has at one time twenty commissionerships. Our attention was called to the fact that one man boasted that he had succeeded actually in having twenty commissionerships so that he could distribute them over the week, having five hearings in five different proceedings on each day of the week, which means that he would devote from half an hour to an hour to each of those proceedings, and then there would be a continual delay, until the very soul of the property owner was exhausted and at the same time bills of costs run up mountain high. We have had cases before us where certain commissioners have in a single proceeding received as much as $15,000 and in many of these proceedings, especially in street openings, those expenses were added to the cost of the improvement, and were levied in many instances, back again upon the owner of the property which was taken in these proceedings. The condition was of such a serious nature that it was the unanimous opinion of the Judiciary Committee and of the Bill of Rights Committee, before which

Committees these matters came, that there should be a change in the situation as it existed. We had before us the representatives of the Merchants' Association of New York; some of the leading lawyers of the city of New York, and some of the citizens who were concerned as property owners, and various real estate organizations. All of them united in condemning this method of taking property and ascertaining the amount of damage sustained. The Judiciary Committee in the 8th section of its article recommended the appointment of Supreme Court Commissioners for the very purpose of dealing with cases of this character, and this Convention has adopted that provision on third reading, and it is now about to go into our Constitution. So that, as a matter of fact, this clause, which I have just called your attention to, is merely supplemental to the action taken by the Convention in creating the Supreme Court Commissioners, and of utilizing them for the purpose of giving effect to the policy which underlies the creation of those commissioners. Now, these commissioners are men who are all obliged to devote all of their time to the public interests. It is not to their interest to delay these proceedings; it is rather to get rid of them and to dispose of them. They are in receipt of a regular salary, just as any judge would be; so that their time belongs to the public and the public can demand that they exercise vigilance, and the litigants can demand that they shall be prompt in their action, and the expenses are borne just as all judicial expenses ought to be, by the public, and no longer by the unfortunate whose property is taken from him without his consent, because if the man were willing to dispose of his property, he would deed it, whereas in these proceedings it amounts to a taking of his property against his will. In the Third and Fourth Judicial Districts or Departments, and such part of the Second Judicial Department not within the city of New York, we have made it discretionary to permit these commissioners to be appointed, because it is not necessary — the same situation does not exist there as exists in the First and Second Departments, and in that respect we also follow the provisions of the Judiciary Article.

I now call your attention to lines 15 to 19, page 3, beginning with the word "where" which should have been printed in italics, and which is not printed in italics, and I, therefore, call your attention to that clause, in order that it may not be overlooked. It is as follows: "Where the proceedings are instituted by a civil division of the State, compensation shall be paid before such taking, unless the Supreme Court, after hearing, because of public necessity shall otherwise direct". Now, that covers a situation which I had already partially described, where property is taken by a city, and without making

any compensation, it goes into possession of such property. We have had cases called to our attention where people had to wait, as I have said, five, six, eight, ten years before they got their money. It is true that the city pays interest at the rate of six per cent. per annum, but six per cent. per annum, as interest, paid after ten years, is of very little use to a man who has been ruined in the meantime: who has been thrown out of house and home, who has gone bankrupt because he has had no place in which to carry on his business; and whose property is tied up in these proceedings. Now, under those proceedings it is to be left to the discretion of the court to make a partial payment if it deems proper to the owner of the property before the proceedings terminate, and that is the least that could be required in such a case. Now, I pass on — because it is lengthy, and I trust that the Committee on Revision may follow this example — we have broken that section into divisions where different subjects are provided for, a, b, c, and so forth, so it is easy to read and understand the several provisions without being obliged to read through a lot of matter not material to the subject under consideration. Now, subdivision "c" refers to "general laws may be passed permitting the owners or occupants"— I read now the present Constitution —" of agricultural lands to construct and maintain for the drainage thereof necessary drains, ditches and dykes upon the lands of others under proper restrictions and with just compensation, but no special laws shall be enacted for such purposes." This provision was the subject of consideration by the Court of Appeals in the matter of Tuthill in 163 New York, where one of the judges of the Court of Appeals was of the opinion that that was unconstitutional. The other six judges did not agree with him, but the act was held to be unconstitutional because it provided for the assessment against the property benefited by such drains, and there was no section in the Constitution permitting that. It also applied to agricultural lands. It had its attention called to the fact that there are certain parts of the State where there were extensive swamps, the drainage of which is desirable. There is, for instance, the Montezuma Swamp which lies between Weedsport and Rochester, a very extensive tract of low land which, if drained, would be, perhaps, as valuable as any in the State, and there are other sections where there are such lands. The Committee has had its attention called to this fact by various persons and adopted the amendment to add to the agricultural lands which might be drained, swamp lands. And then they provided also that the assessment under proper restriction for the cost of such drainage shall be assessed against the property benefited thereby, thus meeting the criticism upon the former constitutional provision which was directed against it by the Court of

Appeals in the case to which I have referred. Now, I come to subdivision " d " which reads as follows: This is new. " General laws may be passed permitting private property to be taken by the owner of the water-power site, which has been actually developed for the more effective development of power at such site, and not elsewhere, where such development will not damage an existing abandoned dam or mill, under proper restrictions and on making just compensation." Now, this subject was presented to the Committee in various forms. Mr. Olcott proposed a measure, and Mr. Baldwin, Mr. E. N. Smith, and a number of other gentlemen. Mr. Baldwin's provision in substance proposed that water power should be the subject of condemnation and that the taking was sought to be declared to be a public use, if taken for the purpose of water power development. I was strenuously opposed to any provision which would permit A to institute a proceeding for the purpose of taking B's water power. I felt such a provision would put it in the power of any great corporation or of any important aggregation of persons to condemn all of the water powers of the State and thus to create a water power monoply. The Committee was opposed to that proposition to a man. Mr. E. N. Smith's proposal was not so extensive and broad. It was, in effect, the introduction into this State of the mill site law of Massachusetts whereby under certain conditions the owner of a mill site may flood the land about him, or might interfere with water below him in connection with the development of the mill. But the constitutionality of such laws have been sustained by the Supreme Court of the United States in Head vs. Amoskeag Manufacturing Co., 113 U. S., in the Clark case in 198 U. S., and in other decisions. The Committee had its attention at the same time called to the fact that from time to time cases arose where manufacturers engaged in the actual operation of a power site who needed a small additional piece of property or needed the right to low lands, or who were prevented from carrying out their legitimate business by the demands which were unreasonable and extortionate of men who were not using the power, never intended to use it, never could use it, but who acted as dogs in the manger. I had occasion to call the attention of the Committee in the same connection to a case which had fallen under my personal observation, and the fact that I have done so has been made the occasion of flooding this Convention with letters of one B. C. Horton, in which he seems to think it necessary to attack me because of the fact that I had been counsel against him in the case to which I called attention, and which merely was presented for the consideration of the Committee by way of illustration of facts which were disclosed to the Committee by Mr. E. N. Smith and other members of the Convention who had come there for the

purpose of seeing whether anything could be done to relieve such a situation. There was not a member of the Committee who was not fully informed of my connection with this case. I introduced no proposal, suggested to nobody that he should introduce a proposal, in this regard, but I considered it to be proper to call the attention of the Committee to the facts which were of the most extraordinary character, but of which I will not weary the Convention with the reciting, because I think it is entirely beside the question. Suffice it to say, however, that in that case, a piece of property worth $2,500 at the utmost was made the basis of a claim of $80,000 against a power development, which involved the cost of nearly a million dollars, after that very individual who asked for these $80,000 had received $70,000 for that which cost him only a few years before not more than $2,500. You can draw your own inference. That is the man that has come here for the purpose of attempting to influence the action of this Constitutional Convention by an attack upon one of the members of the Committee who is here merely to do his duty. Personally, I have less interest in that particular clause than I have in any of the provisions in this article. Personally, I have less interest in that clause than I have in any other matters which have so far come up for the consideration of the Convention.

But let us see what it does. It provides, in the first place, that "general laws may be passed permitting private property to be taken by the owner of a water-power site"— now, what kind of a site is it? — "which has been actually developed". Not a stranger coming in and trying to take another man's property, but the owner of a water-power site "which has been actually developed, for the more effective development of power"— where? —"at such site, and not elsewhere". So that a man cannot for the purpose of developing power at a place different from the site where he has already developed power, attempt to get the right to water or any property to be used and where such development will not damage an existing unabandoned dam or mill, and then only under proper restrictions and on making just compensation. It is for the purpose of enabling the State to deal with such situations which savor of extortion that such a provision as this may be desirable as a part of our fundamental law. It is within your power to deal with this provision as you deem best. I believe it to be important that the Convention should be possessed of the facts, and it is also important for this Convention to decide whether one who in the course of his experience has been confronted with such a situation, is prevented from calling attention to such facts because he has chanced to be counsel in a case in which such question has been involved. I can say with all modesty

that if the fact that a delegate has acted as counsel in a case which may have involved a subject which receives consideration in this Convention he is bound to remain silent, my lips might have been sealed from the first to the last day of this Convention, because it has been my fortune during the last thirty years to have been concerned with the interpretation of practically every section of the Constitution. I now come to next subject. I intend to propose an amendment at the end of subdivision "e", line 21, page 4, at the suggestion of the corporation counsel of New York city made after this measure had been introduced. Attention was called to the fact that in the establishment of a uniform system of streets in the various cities, from time to time streets and highways are abandoned and that it is frequently impossible to discover the owners of the property, and in consequence it becomes impossible to effectuate proper street regulation and improvement, and there is land which is idle, and which becomes an eyesore. Now, the corporation counsel — no, the board of estimate and apportionment of the city of New York, sent a resolution to the Convention in which they asked for relief in the circumstances; and after conference with the representatives of the corporation counsel of New York, we agreed upon this phraseology to be added to the end of line 21, page 4: "The legislature may also authorize cities for the establishment of a uniform system of streets, to take real property within an abandoned street or highway and to sell and lease it." That would follow immediately after the excess condemnation provision as to which similar power is given to the city of New York.

The next provision is subdivision "f" of Section four, lines 22 to 26, and also lines 1 and 2 of page 5. The Committee has decided in response to a request from the corporation counsel of New York city, to make slight changes in the phraseology of this clause. "The cost of any local municipal improvement may be imposed in whole or in part upon the private property benefited thereby, by special assessment, but neither the proportionate share of such cost, which would be assessable against property exempt by law, were it not exempt, nor the expenses incident to the proceeding to which the assessment relates, shall be specially assessed". Improvements are constantly made in the city of New York, and in other large cities, and as street improvements or other public improvements, where the cost of the improvement is assessed by special assessment sometimes entirely on the local property, sometimes in part upon the municipality, and in part upon the private property benefited. Now, that principle is recognized as a proper one. But those wrongs have been against the property owners in those cases. For instance, there are many

streets where there is to be found exempt property, property exempt from taxation, and assessment of very great value. Now, the local property owner is obliged to pay by reason of these special assessments, not only his appropriate share of the cost, but the amount, which would otherwise be paid by this property, is imposed upon him. I know of a case in the city of New York where a very large institution which would have been obliged to pay a hundred thousand dollars at a minimum for street improvements in the vicinity in which it was located was exempt from taxation, and assessment upon that property and the whole hundred thousand dollars were imposed on the neighboring property instead of being imposed upon the city at large as it should have been. There is no reason why the burden from which such property has been exempted as a result of municipal action in many instances should not be borne by the entire municipality and should be borne by these local proprietors. And so also in these proceedings it has been the custom for some years past to assess upon the local owners all the overhead charges of the department of street openings and of expensive maps, and of the office organization, part of the expense of the corporation counsel's department, and this amendment has been adopted as a result of careful consideration of the subject, and I feel that I owe it to the representatives of the city of New York who appeared before the Committee to say that I agreed that this was just and equitable and right and that such a principle would be a proper one to apply to these special assessments. Now comes the subdivision "g" on page 5, which provides: "When private property is taken by the state for the construction, maintenance and operation by it of reservoirs for the regulation of the flow of streams, the legislature shall" — now, we propose to change that to "may" — "may provide by general laws for the apportionment, equitably, of the cost of such improvement and of the maintenance thereof, upon the private and public property and upon the civil divisions thereby benefited". Now, the State has of late years deemed it desirable to engage in the work of regulation of the flow of streams, and in order to accomplish that, it is necessary to construct, maintain and operate a reservoir. Now, this regulation is sometimes for the benefit of the State, which uses this water in connection with a canal and other public work; it sometimes is of benefit to the municipality in connection with their water supply, or otherwise; and it sometimes, also, at the same time, is a benefit to the owners, the riparian owners along the streams who receive the benefit of this improvement. This subject is one which was under consideration by the Legislature of 1915 in what is known as the Machold bill, which became a law. Some question has arisen as

to the constitutionality of that legislation. It is of very important character, and it is for that reason that this measure has been inserted, in order that the cost of such improvement may, by general laws, be apportioned equitably upon the private property, the public property, and the civil divisions thereby benefited.

Now I come to the last provision in this section, which has been the subject of some criticism or discussion, and I feel it incumbent on me as Chairman of the Committee to explain to the members of the Convention what this provision is. First of all, let me call your attention to the italicized words on lines 19, 20 and 21. Mr. Charles H. Young, in an amendment he proposed, called our attention to this situation, namely, that, although, under Section 10 of Article VIII of the Constitution, a city, county, town and village is prohibited from loaning its credit or giving its money or property in aid of any individual, association or corporation, there is no provision in the Constitution which prevents the State from giving away its property. It therefore has given away in the past, property of the value of millions, without receiving a dollar in exchange. It gave away the valuable water power rights on the Niagara river; it gave away for a song — or attempted to give away for a song — the power of the Long Saulte Rapids on the St. Lawrence river, which Mr. A. E. Smith referred to in his argument a few days ago; it has given away property in numerous other instances, sometimes for nothing, sometimes for a mere song. Mr. Low appeared before a joint meeting of the Committees on Conservation and Bill of Rights, which considered the subject of water — and I might say all these water propositions I have discussed were considered by those joint committees. Mr. Low called our attention to the fact that a certain corporation on Long Island received a deed from the State of New York for forty-seven acres of land under water for $200 an acre, which property within four years, without spending one dollar by way of improvements on it, that same company disposed of it to the city of New York for $5,000 an acre. Now the time has come when the State of New York shall not be permitted to give away its property in such a lavish manner. There are many other cases. We have quite a number of other cases presented to us and any one who knows about the past history of New York knows there have been given away in the past years sums in property to a value which staggers imagination, and there is other property now within the State of New York, the abandoned canals, which, unless protected by such a prohibition, may be given away for a song. My friend Senator Saxe some time ago made a statement as to the tremendous value of that property. Even taking

ten per cent of the valuation he placed upon it, it would be a sum, certainly a reasonable nest-egg, for old age. And I therefore call attention to the language which we adopted and included in this provision: "Neither the credit nor the money"— the Constitution as it now reads without certain words which I shall refer to later — "neither the credit nor the money of the State shall be given or loaned to or in aid of any association, corporation or private undertaking".

Now we add, nor shall public property be granted or permitted to any corporation without just compensation. I do not think argument is necessary to indicate the desirability of this. There is no reason why the cities should be prohibited from giving away its property while the State with all its enormous resources should be permitted to give it away. When we came to frame this section, the question came up where we should put it. There was no proper place to put it in Article I because it practically was foreign to that article. We therefore thought that it either had to go in Section 1 of Article VII or Section 9 of Article VIII of the Constitution. Section 1 of Article VII which you will find on page 5 of this bill, lines 12, 13 and 14 in brackets, read as follows: "The credit of the State shall not in any manner be given or loaned to or in aid of any individual, association or corporation". Section 9 reads: "Neither the credit nor the money of the State shall be given to or loaned in aid of any association, corporation or private undertaking". Seeing that Section 1 of Article VII dealt with credit and Section 9 of Article VIII dealt both with credit and money, the Committee believed that that was the section in which to add reference to property because that was followed immediately by Section 10 of Article VIII which deals with credit, property and money of cities. We found that in Section 1 there were the words on line 12: "In any manner" and also the word "individual", in line 13. The words "in any manner" and "individual" were not in Section 9. Therefore, the Committee combined the two provisions in accordance with the policy which is deemed a proper one in constitution framing, to avoid repetitious matter and we therefore made that section read: "Neither the credit nor the money of the State shall in any manner be given or loaned to or in aid of any individual, association, corporation, or private undertaking", thus following the exact formula which is to be found in the very next section, Article VIII, Section 10, with respect to the credit, property and money of a municipality. I have in this hasty manner covered the subject and I shall be prepared now or at any other time to answer any question that any member of the Convention desires to submit.

Mr. Dykman — On page 4, subdivision "d", I find a reference to taking private property for private purposes. If you will turn over to page 3 you will see that in the old Constitution, when private property was to be taken for a private use, the necessity was first to be determined by a jury of freeholders. Here private property is to be taken for private purposes and the necessity is not safeguarded as in the case of private roads.

Mr. Marshall — That is all to be done by general laws. You will see that this follows the precise phraseology adopted in 1894 in subdivision "C": "General laws may be passed permitting the owners or occupants of agricultural lands to construct and maintain * * * * * * upon the lands of others", etc., practically following the same formula. It is following subdivision "C" exactly. Subdivision "B" is in regard to a private road, and was added in the Constitution of 1846 to cover a special case which was set forth in the Porter case, I think, reported in 65 N. Y.

Mr. Wickersham — Point of order, Mr. Chairman.

The Chairman — The gentleman will state his point of order.

Mr. Wickersham — Under the rules should we not take this matter up section by section?

Mr. Marshall — I move now that we take up section 4.

The Chairman — Without objection the committee will take up the proposal section by section.

Mr. Harawitz — Mr. Chairman, I offer the following amendment.

Mr. Marshall — Before you do that, let me present the committee's amendment.

The Chairman — The Chair recognizes Mr. Marshall for the submission of an amendment.

Mr. Marshall — In each instance I desire the committee amendment to be considered first, because that will save time.

The Chairman — The Secretary will read the amendment offered by Mr. Marshall.

The Secretary — By Mr. Marshall: Page 1, line 6, insert in italics after the word "civilian" the following: "unless engaged in military or naval service".

Mr. Latson — This particular phrase, Mr. Chairman, has been under serious consideration by the Committee on Militia and Military Affairs. I refer to the words in italics in lines 5, 6 and 7, on page 1. A proposed amendment to the Constitution embodying substantially this language was introduced and referred to the Committee on Bill of Rights, as I remember it, with a copy to the Committee on Militia and Military Affairs, for their opinion and report. The result was that the two committees collaborated

considerably with reference to this matter and views have been exchanged. The result of that exchange of views was a difference of opinion. The Committee on Bill of Rights arrived at one conclusion, while the Committee on Militia and Military Affairs arrived at another. From what the Chairman of the Committee on Bill of Rights has said, you may easily discern the inspiration for the introduction of this amendment; that is, the abuse which arose in the State of West Virginia and which was corrected by the United States Supreme Court in the decision referred to by Mr. Marshall. The difficulty with the situation was not easily handled and language in the nature of a substitute was suggested and submitted to Mr. Marshall, but it did not meet with his approval. When Mr. Marshall does me the courtesy of saying that at my suggestion the amendment which he has introduced was drafted, I think Mr. Marshall means that, as a result of the conferences that passed between us, he, Mr. Marshall, felt disposed to offer that suggestion. I do not think that Mr. Marshall intended the Committee of the Whole to understand that the suggestion which he has made reflects my views in their entirety or goes as far as I would go.

Mr. Marshall — I merely say that the sub-committee which met with the Committee on Military Affairs was under the impression that we had agreed upon the phraseology. Mr. Latson tells me that that is not in conformity with his understanding, and I shall certainly not dispute what Mr. Latson says on that subject. At least, our impression was that we had reached an understanding, and our Committee acted upon that theory. I have added, however, to the language to which we had agreed, words, which I think meet the thought which Mr. Latson had in his mind, that there were teamsters, cooks and camp-followers who were civilians but at the same time were in the military service and who should be disciplined by military tribunals. We have therefore excepted them from this general principle and limited it therefore in its operation to civilians in the true sense of the word.

Mr. Latson — In other words, Mr. Chairman, the two committees have made every effort to come before this Convention with language satisfactory to both, but they have been unable to succeed in that particular. I may say that the view which I myself held as the result of the conference between the two sub-committees was that an agreement had not been reached, but that we looked forward to a further conference, and this was shared by each member of our sub-committee, Mr. Marshall, so I am not alone in that view of the result. Let me speak on the merits of the original proposition. You see what confronted us. Here was an attempt to limit the jurisdiction of military tribunals to

such a degree that there was grave danger of destroying discipline under conditions when every citizen would be anxious to preserve discipline above all things. There are offences under the Military Law not recognized by the Penal Law. For example, even in time of peace it may become an offence under the Military Law of this State to carry intoxicating liquors within the limits of a post, camp ground, etc. Such an offence may be summarily dealt with by a commanding officer under our Military Law, whether or not it can be made the subject of a charge before a criminal court. One might not be able to swear out a warrant for an offender in that regard. Other illustrations could be recited. Take the case of a drill or an encampment on one of our camp grounds. If there were a disposition to invade the grounds and to disregard the sentries, you might have a technical trespass, but I think such an offence would scarcely be cognizable by the State courts, while under our Military Law the commanding officer would deal with the offender summarily. Thus you see the suggestion presented was very far-reaching, and there was grave doubt as to the extent to which the power of disciplining civilians would be dethroned, especially in time of war, riot or insurrection. If at such a time a civilian retainer should fire upon a guardsman or strike him down with a bludgeon, the military force would have no jurisdiction over the offender provided the police courts were open, even though the Articles of War were operative. The question arose whether this language described exactly what was in contemplation and expressed just the condition of affairs we desired to create. It seemed to our Committee that the language was incomplete. We have tried very seriously, Mr. Chairman, to frame language which would reflect the sentiment for which Mr. Marshall stands and at the same time preserve the necessary military discipline, but we have not succeeded in so doing. After conferring with the Major General, we were of the opinion that the adoption of the original amendment would be very unfortunate. The Major General, writing to me within a day or two with reference to this measure, states in part as follows: "The proposed amendment would seriously trespass upon the jurisdiction established by necessity and custom of two classes of military courts, namely, military commissions and courts-martial. As is well known, the military commission is the agency used for the administration of justice when the military power, through the necessities of the occasion, supervenes the civil authorities. The Constitution should certainly not impose upon the people obstacles in the way of proper restoration of law and order in time of insurrection." There is more to his letter, but that is the important part to read for your information. Mr.

Chairman, in view of all that has transpired as the result of our consultation, I offer the following amendment.

The Chairman — Mr. Latson offers an amendment, which the Secretary will read.

The Secretary — Page 1, lines 5, 6 and 7, strike out the words in italics.

Mr. Wickersham — Mr. Chairman, a very illuminating debate on this very subject was held in the House of Lords in England in December last, the minutes of which I handed to Mr. Marshall some days ago. The subject under discussion is what is known as the Defense of the Realm Act and it proposed to invest courts-martial during the war between England and Germany with power over, not only those engaged in the military and naval service but over civilians who might be apprehended by militaary officers doing something which was considered to be in the nature of assistance to the enemy. The act brought forth a most spirited protest on the part of the leading law lords in the House of Lords. Lord Bryce, particularly, pointed out the principle which had been maintained for 150 years in England; that, so long as the courts of the realm were open for the regular administration of justice, no civilian not actually engaged in military or naval affairs should be subject to the jurisdiction of a court-martial. The government urged the passage of the bill, in view of the exigencies of the occasion and objected to the obstacles that were put in its way by Lord Halsbury, Lord Bryce and others. Finally the responsible representative of the government gave a pledge that if those gentlemen would stand aside and allow the act to be passed as it was presented, they would undertake at the next session to amend it to meet their views, and in the meantime they stipulated that no civilian would be subjected to the jurisdiction of courts-martial so long as one of the duly constituted courts of the realm was in session. Mr. Chairman, it seems to me this section embodies a sound principle. No military tribunal should have jurisdiction over civilians not engaged in the military and naval forces so long as the duly constituted courts of the land are in session. Due process of law, to which every citizen is entitled, save under those extraordinary circumstances where the ordinary administration of law is broken down because of domestic disorder or invasion or war — I say, these civilians should never be subjected to the control of a military tribunal except in time of war or under most extraordinary circumstances. I think the Bill of Rights Committee in this regard has formulated a provision which ought to meet with the unanimous approval of this body, as it has been amended by Mr. Marshall.

Mr. Bell — Under your interpretation of this law, would a

state of riot in which the militia had been called out by the Governor constitute a state of war?

Mr. Wickersham — No, it would not be a state of war. After the riot had been put down by force the trial of the rioters should be by the courts of the land, and not by courts-martial.

Mr. D. Nicoll — Mr. Chairman, I think I have done my share of talking in this Convention and I really had very little expectation of speaking upon the Bill of Rights proposal. In fact, I had hoped to be able to say that there was one article of this Constitution which was left alone. When we return home we shall be asked, of course, by our friends and neighbors, "Well, what did you do to the Constitution?" And we shall be obliged to say that there was scarcely an article which we left untouched. We improved, as we thought, the article on suffrage to accommodate European tourists and commercial travelers. We gave the legislative branch of the government additional powers and increased salaries. We entirely reconstructed the executive branch, the Governor and the State officers. We rewrote the judiciary article and brought that up to date. We got up an entirely new conservation scheme. In fact, we revised and improved and reconstructed every article of the Constitution. Some one will surely say: "Well, was there nothing that you left untouched?" and I had hoped, I must confess, to be able to say, "Yes, there was one, and that was the old Bill of Rights." As the physician said in the confinement case, boasting of the success of it, "Well, we lost the mother and the child, but we saved the old man." But, gentlemen, it was not to be. The passion for change and improvement has seized us all, and this Convention, instead of being the reactionary Convention which was predicted by some of its critics, has now become not even a stationary Convention; in fact, it is not even a progressive Convention. It may be justly described as a radical Convention. So now we come to the last bridge which we have to cross, and that is our treatment of the Bill of Rights. I take up Section 1, the one at present under discussion. Here I find that a provision has been put into the Bill of Rights to provide for something that never has happened and probably never will happen in the State of New York. Because something happened in the State of West Virginia and something happened or was likely to happen in England, we propose to amend our Bill of Rights. That seems to be an entirely insufficient reason for amending our fundamental law. Suppose something happens in Colorado or Mexico or Arizona which offends our notions of personal liberty. Are we to prepare against it by amending our Bill of Rights? It seems to me we can trust the law-abiding habits of the people of our State without inserting any such provision as that. Now, on the very next page I find that, on a conviction for

crime now punishable by death, the jury may by their verdict impose either the death penalty or life imprisonment. Isn't that just what they do now? I would hate to count the number of murder cases that I have prosecuted in my younger days, but the judge always charges the juries that they may find a verdict for murder in the first degree or murder in the second degree, manslaughter in the first degree, manslaughter in the second degree or they may bring in a verdict for acquittal. When a jury gets together and has any doubt in the case they bring in a verdict for murder in the second degree. I appeal to the experience of the numerous prosecuting officers and gentlemen of the bar in this Convention if that is not the way that criminal justice is administered in this State. What is the necessity then for this provision any more than the provision inserted on account of the disturbance in West Virginia? Now, as to imprisonment for debt, that is a subject upon which wise men differ —

Mr. Harawitz — A point of order, Mr. Chairman. I understood we were discussing this section by section and that before we go into the discussion of another section, we shall dispose of the first section. I understood we were discussing Section 2.

Mr. Wiggins — Mr. Chairman, I ask unanimous consent that Mr. Nicoll be permitted to continue.

The Chairman — The Chair understands that Mr. Nicoll will confine himself to the section under discussion.

Mr. D. Nicoll — Under that rule it requires a man to speak twice — so much for that section; I will be very brief. Now, the italicized matter in the middle of page 2: "Any person may, however, in the manner prescribed by law after examination or commitment by a magistrate, waive indictment and trial by jury on a charge of felony punishable by not exceeding five years' imprisonment, all subsequent proceedings being had by information before a superior court of criminal jurisdiction or a judge or justice thereof." Now, that provision was put in obviously for the purpose of bringing to trial some persons who in some districts of the State are obliged to remain in prison until the meeting of the grand jury, and, of course, that is a desirable thing; I appreciate that as well as any one; but I want to say as far as the city of New York is concerned, it is a very bad thing indeed, and you have to determine whether or not it is so desirable up State that you want to do something that will seriously affect, in my opinion, the administration of criminal justice in the city of New York. Now, why is it bad? He may waive indictment and trial by jury on a charge of felony. Now, the way business is conducted in the criminal courts in New York under the great pressure —

Mr. C. A. Webber — Mr. Chairman, may I indicate to the gentleman that some of the jury are on this side of the chamber?

Mr. D. Nicoll — I always try to address the ruling classes.

Mr. Wickersham — There are no classes present, Mr. Nicoll.

Mr. D. Nicoll — I want to say, here is a judge with a calendar of 150 criminal cases to dispose of, and the question is as to whether or not a prisoner may waive, or, as it happens now, whether he will waive trial and plead guilty. And the practice is the court officers talk with the prisoner or with the attorneys. I don't like to put any man in that position where the question will be put up to him: "Well, will you waive the indictment and trial by jury in order to expedite the business of the court? You know what the alternative is if you don't waive. You will be indicted and you will be remembered when the sentence comes." I don't like it. And there is another reason against it. If you do this, the prisoner will waive, when he sees an opportunity for his case to go on before a weak judge. In other words, he will play for the advantage of getting before a judge who he knows is disposed to impose a very light sentence, and that is a morally objectionable feature to any such suggestion, and so I am opposed to that. I don't believe that it will stand the test of the city of New York, even though it may be desirable for other purposes in other districts.

Mr. Marshall — Are you aware of the fact that the district attorneys of New York approve of that?

Mr. D. Nicoll — I haven't the slightest doubt of it. It is a district attorney's proposition. That is what it is.

Mr. Marshall — But didn't you say a moment ago that a man might pick out an easy judge who would enable him to get off lightly?

Mr. D. Nicoll — Yes. On one side it helps the district attorney.

Mr. Marshall — The district attorney would be apt to hold the balance poised.

Mr. D. Nicoll — Well, anybody could read between the lines and see what that leads to. We had this up before the Committee on the Judiciary and put up to the judges, and Judge Ingraham said that he thought it a very objectionable amendment, as I do.

Now, gentlemen, I pass over the question of the water sites and the ditches, because there are other gentlemen in this Convention so much more capable of discussing the objection to those. And I come down to the last section, Section 9, which reads: "Neither the credit nor the money of the State shall in any manner be given or loaned to or in the aid of any individual, association, corporation, or private undertaking; nor shall public property be granted or leased", and so forth. And I say to myself, why, why, "in any manner"? Is it possible that in this eleventh

hour of our Convention we have the old anti-privilege amendment appearing? Is this our respected friend Barnes with a clean shave and a new suit of clothes? I think it has a suspicious look and it should be closely examined by those who voted against the other proposition. Now, Mr. Chairman, that is all I have to say, except that I desire to offer an amendment, when the occasion arrives, to Section 2.

Mr. Dykman — I desire to offer an amendment to Section 1.

The Chairman — Are there any further amendments to Section 1?

Mr. Angell — Mr. Chairman, I desire to offer an amendment.

Mr. Harawitz — Mr. Chairman, I offered an amendment some time ago.

Mr. Wagner — Would it not be better to have the amendments read as they are handed up?

The Chairman — The Chair will state that Mr. Harawitz's amendment is taking the regular course and is No. 2. It is the desire of the Secretary to have all the amendments submitted first and then read in their order.

Mr. Cullinan — I desire to offer an amendment.

The Chairman — If there are no further amendments Mr. Dykman's amendment will be read.

Mr. Wagner — Mr. Chairman, may I ask the Chair whether we are considering this section by section of the bill or the Constitution?

Mr. Marshall — Of the Constitution.

Mr. Wagner — Of the Constitution?

Mr. Marshall — Yes.

Mr. Dykman — Let the Chair rule on that. Not the chairman of the Committee on Bill of Rights.

The Chairman — The Chair rules that we are discussing Section 4.

Mr. Dykman — Of the pending bill?

The Chairman — Section 4 of the pending bill.

Mr. Wickersham — There are several sections of the Constitution.

The Chairman — The Chairman will take that into consideration.

Mr. Marshall — That is desirable. Otherwise we will have confusion.

The Chairman — The House will be in order. The Secretary will read the amendments in their order as they came to the desk.

Mr. Angell — Mr. Chairman, the amendment which I offered was to Section 5 as it is printed.

The Chairman — Mr. Angell's amendment is withdrawn, and it will be presented at the proper time. The Secretary will proceed.

The Secretary — By Mr. Marshall: After the word "civilian" in line 6, page 1, insert the words "unless engaged in military or naval service" By Mr. Harawitz, on page 1, line 10, strike out the words "On a conviction", and on page 2, strike out line 1, to —

The Chairman — That amendment affects Section 5 and will be considered when that section is taken up. Mr. Harawitz's amendment is withdrawn.

Mr. Harawitz — For the present, yes.

Mr. Latson — Page 1, lines 5, 6 and 7, strike out the words in italics. Also the brackets.

By Mr. Brackett: Page 1, line 1, strike out the word "and" and after the word "seven" insert the words "and nine".

Mr. Tuck — Mr. Chairman, I think there are only two amendments, are there not, affecting that portion of Section 1 that is described as Section 4 of the Constitution?

The Chairman — You are correct.

Mr. Tuck — Mr. Chairman, I hope that the amendment proposed by Mr. Latson will prevail for three reasons: First, the reasons advanced by Mr. Latson, that it would greatly interfere with the operation of military courts as now constituted with reference to civilians who, not in the employ of the State, or in the service of the State, may come upon military property. Second, because it is obviously aimed at a condition which does not and has not existed in the State of New York, to wit, the abuse of military courts in cases of insurrection and riot; and, third, for the principal reason that that objection is covered by the laws of the State as they now are. The military law of this State, Section 115, provides "When an armed force is called out for the purpose of suppressing an unlawful or riotous assembly, it must obey the orders in relation thereto of the civil officer calling it out to render the required aid". In pursuance of the military law regulations are issued which have the force and effect of law. Section 632 of the regulations of the State of New York provide: "Commanding officers may cause troops to arrest all rioters and other persons found in open resistance to the civil authorities, and are empowered and required to overcome such resistance and to secure and keep the peace by the use if necessary of their arms and of the power which they possess, but they are not authorized to punish any person for any offense. Persons arrested shall be delivered to the civil authorities". Mr. Chairman, I think that the regulations and the military law of the State should not be disturbed, as the situation is amply covered to effect the correction of the evil which the Proposed Amendment is intended to meet.

Mr. M. Saxe — Of course, the gentlemen appreciates that the military law can be repealed?

Mr. Tuck — Yes, sir.

Mr. M. Saxe — Why isn't it wise then, to provide by the Constitution against just such a situation as this proposal does?

Mr. Tuck — Because it is not anticipated that such evils will arise and because by your proposal you interfere with the proper operation of military courts in the case of necessity.

Mr. Marshall — Isn't it a question of whether the civil or military arms of our court shall prevail? So long as the courts are open, should not the civil courts deal with all such questions?

Mr. Tuck — They do.

Mr. Latson — The Chairman of the Military Committee stated, or showed, that it was a fact.

Mr. Dahm — Can you give us any guarantee that the conditions of this State would not in the future be such as we had in Colorado and West Virginia in recent years.

Mr. Tuck — I can only give you, Mr. Dahm, the guarantee of the citizenship of this State.

Mr. Dahm — And for that very reason that amendment is introduced, to prevent the possibility of such an occurrence in the State of New York.

The Chairman — The question has been called for. The question occurs on Mr. Marshall's amendment. Is there any request for a further reading of the amendment? As many as are in favor of Mr. Marshall's amendment will say Aye, contrary No. The Ayes seem to have it and the amendment is adopted.

The Chair suggests that that disposes of the amendment by Mr. Latson.

The Chairman — The question occurs on the amendment offered by Mr. Latson.

Mr. Wickersham — A rising vote, Mr. Chairman.

The Chairman — That strikes out all in italics from Section 4. As many as are in favor of striking out the italics will say Aye, contrary No. The Chair is in doubt. As many as are in favor of the amendment will rise and remain standing until counted. The gentlemen will be seated. All those who are opposed will rise and remain standing until counted. The gentlemen will remain seated. The Secretary will announce the result.

The Secretary — Ayes, 65; Noes, 50.

The Chairman — Mr. Latson's amendment is adopted.

Mr. Harawitz — I now offer my amendment to Section 2.

Mr. D. Nicoll — Mr. Chairman, does not the question occur on Mr. Marshall's amendment?

The Chairman — The section was adopted.

Mr. Marshall — I now move Section 5.

Mr. J. G. Saxe — Mr. Chairman, I rise to a point of order. Section 4 has not been approved.

The Chairman — The gentleman from New York has not been recognized.

The Chair understood the approval of Mr. Latson's amendment carried with it the approval of the entire section.

The Delegate — No.

The Chairman — The approval of Mr. Latson's amendment carried with it the approval of Section 4. Am I correct, Mr. Marshall?

Mr. Marshall — My proposed amendment has been voted out; I haven't any further interest in the subject.

The Chairman — Unless there is objection, Section 4 will be considered as adopted. The Chair hears no objection, and it is so declared. The Committee has now under consideration Section 5.

Mr. Reeves — Two or three days ago the minority of the Committee on Bill of Rights handed up a minority report, and now I wish to hand up a proposed amendment to go with it, and in conformity with Mr. Marshall's suggestion, I ask that that amendment be given the first position with regard to Section No. 5, and I hope the amendment may be read first.

The Chairman — The Secretary will read the amendment by Mr. Reeves.

The Secretary — By Mr. Reeves: Page 1, strike out all of line 10 after the period, and on page 2, strike out lines 1, 2, 3, and all on line 4 to and including the period, so that there shall be stricken out the entire sentence which reads as follows: "On a conviction for a crime now punishable by death, the jury may by its verdict impose either the death penalty or life imprisonment, and in the latter event no pardon or commutation shall be granted unless the innocence of the person convicted be established."

The Chairman — The amendments will be received, so that the committee may discuss intelligently just what changes are desired to be made.

Mr. Wagner — Mr. Chairman, may we have them read?

The Chairman — They will be read as submitted.

Mr. Unger — Mr. Chairman, I have already submitted an amendment which will fall in line with what Mr. Reeves suggested, and I think that it should be next in order.

Mr. Steinbrink — I have also submitted an amendment.

Mr. Eisner — I have submitted an amendment, and I suggest that the amendments be divided into two parts, those which affect the capital punishment feature of this Section 5, and those which affect the balance of it. I think in connection with the capital punishment part, the amendments are all the same, and the discussion on them will last much longer than on the other amendments.

The Chairman — The suggestion is made that the amendments be divided into two classes.

Mr. Marshall — I think that is very desirable.

The Chairman — Is there any objection?

Mr. Marshall — First, the capital punishment provision, and the next, imprisonment for debt?

The Chairman — Yes.

Mr. Marshall — That is entirely desirable.

Mr. Betts — I offer the following amendment.

Mr. Wagner — I make the suggestion. Would it not be better for us to have each amendment as offered read, because otherwise you may have two or three amendments to accomplish the same result.

The Chairman — The Secretary will read the amendments in their order. I assume that those who submit similar amendments will withdraw them.

Mr. Wagner — I know, but you save time the other way.

Mr. Chairman — Are there any other amendments to be offered to the death penalty section?

Mr. Dahm — I submit the following amendment.

The Chairman — The Secretary will read the amendments affecting the death penalty provision.

Mr. Winslow — I have already submitted an amendment, and I presume it is in the hands of the Secretary.

The Chairman — If the delegate's name is on it, it will be read.

The Secretary — By Mr. Harawitz: Page 1, line 10, strike out the words "on a conviction" and on page 2 strike out lines, 1, 2, 3 and 4 down to and including the word "established".

By Mr. Gladding: Page 1, line 10, strike out all after the period; page 2, strike out lines 1, 2, 3, and all of line 4 to and including the period.

By Mr. Brenner: On page 2, between lines 7 and 8 insert "But this shall not be construed to forbid the issue of a writ or order in the nature of a writ of ne exeat"

By Mr. Cullinan: Page 2, line 6, after the word "penalty" insert —

Mr. D. Nicoll — Mr. Chairman, the understanding was that we were to have only the amendments which referred to the first part of the section.

The Chairman — The Chair understands that. The Chair has requested the Secretary to disregard that. The Chair will disregard the amendment offered by Mr. Brenner at this time and we will take it up when we reach the section which it relates to.

The Secretary — By Mr. Cullinan: Page 2, lines 6, after the word penalty —

The Chairman — That also relates to the second.

Mr. D. Nicoll — That is out.

Mr. Cullinan — I will withdraw that for the present.

The Secretary — Page 2, lines 3 and 4, strike out the words " and in the latter event no pardon or commutation shall be granted unless the innocence of the person convicted be established.

The Chairman — What delegate offered that?

Mr. Baldwin — Mr. Chairman, I believe that is my amendment.

By Mr. Unger: Page 1, line 10, strike out the words in italics. Line 1, page 2, strike out the words in italics. Line 2, page 2, strike out the words " its verdict impose either the death penalty or " and insert after the word " or ", on line 2, page 2, the words " No crime shall hereafter be punishable by death and in case of the imposition of the punishment of ". Page 2, line 3, strike out the words " and in the latter event ".

By Mr. Winslow: Strike out, page 1, line 10, the words in italics. Strike out the words in lines 1, 2 and 3, and all the words in line 4 to and including the word " established " on page 2.

The Chairman — Mr. Betts, does the amendment relate to Section 4, the death penalty?

Mr. Betts — Yes.

The Secretary — By Mr. Betts: Page 5, after the last line, insert the following:

Section 4, Article I of the Constitution, is hereby amended by inserting therein a new section to be properly numbered and to be submitted separately to the people at the same time as the proposed new Constitution, which section shall read as follows: " On a conviction for murder in the first degree the penalty shall be life imprisonment and no pardon or commutation shall be granted unless the innocence of the person convicted be established. The provisions of this section shall be controlling, any other provision of this Constitution to the contrary notwithstanding." By Mr. Dahm: Page 1, line 10, strike out the words in italics. Page 2, strike out lines 1, 2, 3 and 4 to and including " establish " and insert " capital punishment is forever abolished."

Mr. Reeves — The Proposed Amendment is in the first place to make a jury optional system as to capital punishment and in the second place to strike out " capital punishment " altogether from the law of this State. This is one of the most solemnly important questions that can be brought before this Convention. We cannot, Mr. Chairman and gentlemen, make much progress in this matter by dwelling on the horrors of capital punishment. Every moral and religious and esthetic sense and sensibility of every person around this circle contemplates such punishment with abhorrence and wishes it never would have to be. It is the duty however of

Constitution makers to regard the safety and the welfare of the people of the State of New York. To think of those who but for the death penalty might be the victims of the assassins, the highwaymen, the gangster, the gunmen, or the wretch who assaults and murders women in secret places. This I wish to lay down as an absolute axiom: If to do away with the death penalty in this State would cause one more murder than otherwise were to occur then we must not do away with it. Now in the first place, this is not a question for the Constitution. To put this Proposed Amendment into our fundamental law and crystallize it there would be a horrible calamity in case we found it did not work well and produced a riot of crime, because it would take three or four years to get rid of it. They have tried during the last year in no less than twenty-two States of the Union to do away with capital punishment. They have succeeded in only one, and in not one of them have they tried to do so by the Constitution. This is a matter for our Penal Law that can be readily dealt with by the Legislature. The very people who are represented in this Convention and who want to get rid of capital punishment altogether ought not to wish that kind of amendment as proposed by the Committee on Bill of Rights, by vote of 6 to 5, to go into the Constitution, because it prevents even an amendment for years that would bring entire abolition of such punishment.

Now, Mr. Chairman and gentlemen, let us look at this proposal; this jury optional system of dealing with this horrible crime: It is substituting the rule of twelve men for what ought to be the rule of law. The awful sentence, "The soul that sinneth, it shall die," was pronounced as a law. If in this State there is to be a justifiable declaration against a murderer "because you have committed this crime you shall die," that declaration should be made by a law by the twelve millions of people of the State; and those twelve millions have no right to ask twelve frail men to take the responsibility of saying that upon their shoulders. It is hard enough to-day to induce men to sit on a jury to try men for murder. It would be practically impossible to get men of conscience to sit on a jury when you say to them it shall be for you to decide, not for the law, you twelve men to decide whether this man shall die. It is unfair to the jury, it must necessarily result in inconsistencies — one jury condemns to death and another will condemn to life imprisonment. It must depend on the nature of the jury and the ability of the lawyers who appear before it. It must lead to confusion in the jury room. Mr. Chairman and gentlemen, as a matter of fact where it is used in the southern States, chiefly, it is used to hang the negro and send the white man to imprisonment for life. It has been said that the death penalty is not a deterrent. Gentlemen, I ask you, in spite

of all the statistics that might be given here to-day, to brush aside for a moment consideration of honor and love and duty and patriotism and think of yourselves as mere human animals, and look down deep into your own consciousness and conscience and intuition, and the answer will come there is no greater deterrent on the face of the earth than death. "All that a man hath will he give for his life." And that is the greatest deterrent we can put before these physical animals that commit murder. If we put them in prison for life, one or two things will happen: this proposal will put them there without the possibility of pardon if they are guilty. If you let them associate with their fellow beings in that prison they will commit more murder. There is no greater penalty ahead of them. They have everything to gain and nothing to lose by cutting or shooting their way out of prison. If, on the other hand, you put them in solitary confinement, you will cause insanity. Won't it be much more humane, by one act that is painless, to put them out of the way? And, finally, I wish to say that down there in the melting pot in Greater New York is the very last place in the world to try an awful experiment of crystallizing into your Constitution for four or five years something that may make a riot of crime. We welcome aliens that are coming there, we want them to come, but we know that they are bringing from Southern Europe plenty of people who recognize no law but the law of force. Think carefully, think profoundly, before you undertake to say that down in that great city you will fix it so that for the next three or four years you cannot inflict effective punishment by death upon the murderer. It is the sudden, quick infliction of the death penalty that has done the good down there in recent times and will go on doing the good. There is no demand in this State for a change, and either to make this change suggested or to abolish the death penalty by the Constitution of the State of New York, will be a crime in itself and ought not to occur.

Mr. Betts — Mr. Chairman, it is the duty of this Convention, being a Constitutional Convention, to deal with fundamental principles. I know of nothing more fundamental than human life, and I know of nothing more wicked than to take a human life unnecessarily. Now, the question for this Convention to consider is this: Whether the abolition of capital punishment results in benefit to the State, to society, or whether the retention of capital punishment offers greater security to life and to society. I contend that capital punishment has already been abolished by the conscience of the people. You cannot enforce the penalty. You can only convict about two out of every 100 homicides, and out of the trials for murder only about 3 per cent. of those tried are convicted. Let me read you the following: "Homicide is by far the most

rapidly growing and prevalent of serious crimes in the United States. Not only do our prison records show it but also many cities complain of the tremendous growth. In 1910, according to the Chicago police report, there were 202 homicides in that city and only one man sentenced to be hanged. In New York, since 1901, there have been 1,167 trials for homicides and 382 convictions. The report does not say how many homicides were actually committed. In Louisville in 1910, 47 homicides and no executions. In Dallas (92,000 population) in 1910 there were 54 homicides, an average of one for each 1,704 of the population. There were but 23 indictments and only one offender convicted." (From Journal of Criminal Law and Criminology, volume 3, page 759, January, 1913.) Now, I have statistics, but I have not the time to read them all. Taking the census of 1910, taken by the United States government, the census taken for 18 States in these United States, there were four States that had abolished capital punishment, and the other States had capital punishment. Now, the statistics gathered by the United States Census Bureau show an interesting result:

CAPITAL PUNISHMENT STATES, 1909, PER 100,000 POPULATION.

California	20.0
Colorado	21.3
Pennsylvania	8.8
Ohio	10.2
New York	7.7
New Jersey	7.6
Indiana	10.7
Maryland	7.2
Connecticut	7.9
Massachusetts	4.8
New Hampshire	2.9
Vermont	10.6
Washington	12.3
South Dakota	9.4

It will be observed that New Hampshire is the lowest of the capital punishment States, and I understand that capital punishment has been practically abolished in New Hampshire. Not an execution has taken place in that State in about ten years. The jury in that State can inflict life imprisonment or the death penalty. Now let us look at the States that have abolished capital punishment.

No Capital Punishment States, per 100,000 Population.

Wisconsin	3.6
Michigan	4.4
Maine	2.2
Rhode Island	5.1

Taking the average for ten years in capital punishment States it is 8.25 per 100,000 while in the States that have abolished capital punishment it is only 3.85 for each 100,000 of the population. Official statistics compiled by the United States government prove conclusively that in the States where capital punishment has been abolished crime decreases, with the result that these States have a greater security and a greater protection to society by reason of the fact that more criminals are confined and punished, and therefore more criminals are removed from society, and are not left at large to continue to prey upon the interests of society. In this connection, taking this same table, I have figured out an interesting exhibit. The statistics, although not complete for the whole ten years, are complete in every State except Ohio for two years, 1908-1909. Therefore, I have taken and grouped several of the States where conditions appear to be similar in order to show the tendency, the present tendency, of the operation of the law where the death penalty prevails and where imprisonment prevails. The following table will shed much light upon this subject:

Group 1 — Homicides per 100,000 Population.

New Jersey — Capital Punishment.	
1908	8.3
1909	7.6
Decrease	0.7
Rhode Island — No Capital Punishment.	
1908	7.5
1909	5.1
Decrease	2.4
New York — Capital Punishment.	
1908	8.9
1909	7.7
Decrease	1.2

GROUP 2.

Connecticut — Capital Punishment.

1908	7.3
1909	7.9
Increase	0.6

Wisconsin — No Capital Punishment.

1908	4.7
1909	3.6
Decrease	1.1

Indiana — Capital Punishment.

1908	12.0
1909	10.7
Decrease	1.3

GROUP 3.

Maryland — Capital Punishment.

1908	7.7
1909	7.2
Decrease	0.5

Maine — No Capital Punishment.

1908	2.0
1909	2.2
Increase	0.2

Massachusetts — Capital Punishment.

1908	4.5
1909	4.8
Increase	0.3

In Wisconsin, Michigan, Maine, Rhode Island, homicides are on an average over one hundred per cent. less than in States where they have capital punishment and it is easy to understand why this is true. Now let me call your attention to what the Governors of some of these States and other authorities say upon this question. Here is a letter from Woodbridge N. Ferris, Governor of

Michigan, and in that letter he says: "I am right when I say that convictions under imprisonments are so much greater and that more criminals are removed from society that less criminals are left to prey upon the interests of society," and he says another thing. "In death penalty cases the evidence is frequently circumstantial. Years after the conviction new information is frequently obtained whereby justice can be meted out to the living, never to the dead. I sincerely hope that my native State, New York, will abolish capital punishment."

Now, a great many of the advocates of capital punishment say that there is never an innocent man convicted or executed. I have collected myself over fifty cases where innocent men have been executed and in Michigan of which the state where Governor Ferris is governor, capital punishment was abolished in 1847, and from that time until 1899 a joint committee of the Michigan Legislature stated that during that time, from 1847 to 1899, nine men had established their innocence and had been liberated. Now, I have a letter here from the Governor of Wisconsin, Governor E. S. Phillipp, and he says that my contention that imprisonment brings more conviction and more security, and a greater decrease in crime is also true and he concludes his letter by saying, "Then, too, there is another side — yesterday we had a case in Milwaukee where a man who had been supposed to be murdered, and for whose death another man had been put in the penitentiary, put in his appearance quite unaware that he had been killed. Under the most careful administration of justice such things do happen." Here is a man who had just returned under those circumstances. Suppose the other man had been executed. I have gathered statistics of over fifty such cases, and only one case out of a hundred ever comes to light. Don't you think we have sent enough innocent men to the eternal bar of justice and mercy, to plead trumpet tongued against the deep damnation of their taking off? Now I want to say that the State has not the right to take a human life. No man has a right to take human life and therefore he cannot give that right to another. No number of men, however large the number may be, can give the State the right to take a human life, because the men themselves who assume to give the right to the State have no such right either inherent or acquired and they cannot transfer to the State a right they never had, and which they never can possess. God alone has the right to terminate a human life. He gives and He may take away. The State can not give life and it has no right to take it away. If it takes the property of an innocent man it can restore it. If it takes the liberty of an innocent man it can restore it; but when the State takes the life of an innocent man it can not restore it. There is no Promethean

match which can relight the lamp of life. Therefore it is evident that the taking of a human life by the State is an illegal and unwarranted usurpation and tyranny that can find no basis in morals and no sanction by civilization. In support of this contention I wish to cite an eminent authority. Dr. Benjamin Franklin said: "The power over human life is the sole prerogative of Him who gave it. Human laws, therefore, are in rebellion against this prerogative when they transfer it to human hands." Upon the same subject Sir William Blackstone said: "Life is the immediate gift of God to man, which neither can he resign, nor can it be taken from him, unless by the command of Him who gave it." Authorities equally eminent might be multiplied upon this point. Every intelligent man will concede that he has not the right to take a human life except in self-defense, and if he has no such right he cannot transfer the right to the State.

We need not the authority of a Montesquieu or a Becarria, we need only intelligence and common sense to give complete sanction to the wise maxim that every punishment which does not arise from necessity is tyrannical. Therefore, to inflict the cruel penalty of death when it is unnecessary is the very climax of tyranny. If it is a crime for the individual to kill, it is just as great a crime for the State to kill as it is for the individual. Strength and numbers and might does not reverse a moral principle. If it is a crime for the individual to take a human life in the heat of passion when reason is unhinged or the mind is diseased, then how much more is it a crime for the State in cold blood, with intelligent and studied deliberation to take a human life? It is not and cannot be the sweet and fragrant blossom of high civilization. When society reaches the moral and mental attitude that it is willing to take the life of a fellow man it has reached the same mental attitude that the criminal reached when he took the life of his victim. I am not in sympathy with the emotional sentimentalist who makes the criminal a hero, a pet, or a favored member of the human family. I believe in a sane, firm administration of justice. Killing goes far beyond this. It goes so far that it violates natural morals, Divine commands and puts an indelible blot on civilization. It invokes the savage instincts of retaliation and revenge and while condemning the criminal for taking human life, it punishes him by deliberately repeating his repulsive act on the specious plea of necessity. So long as society does this, so long as it continues to teach the criminal by its example that life is not sacred and that the State is justified in taking life to exterminate its enemies, then just so long will the criminal proceed to follow society's example and exterminate his enemies. So long as we continue this cruel and inhuman practice

of capital punishment, just so long will murderers multiply as forgers and thieves multiplied under the death penalty in England and just so long will the progress of humanity and civilization be held back, because society is chained to ancient barbarism by the links of retaliation and revenge. In every age as nations have advanced and become enlightened and civilized, they have eliminated harsh, cruel and inhuman punishments from their criminal code. There is no surer standard by which to determine a nation's just right to the favorable opinion of mankind than by its criminal code. If the criminal code is mild, just and merciful, the nation is humane, educated, cultured and civilized. The State of New York to-day cannot afford to have its culture and civilization measured by its criminal code so long as the death penalty prevails. Gentlemen of the Convention, is it not time that this enlightened State banished the coarse and shriveled hag's retaliation and revenge and gave a more cordial welcome to those angels of civilization — the beautiful daughters of justice and mercy?

Mr. M. J. O'Brien — Mr. Chairman, I am not going to make any argument, but I would like to have read the minority report on this subject. The Committee divided by six to five. I think it would be helpful if we might have read the minority report.

The Chairman — The Secretary will read the minority report, submitted by the Committee.

The Secretary — The minority report of the Committee on Bill of Rights on the question of permitting juries to fix punishment in capital cases; signed by Mr. M. J. O'Brien, J. G. Schurman, George H. Bunce, A. G. Reeves and Francis Martin: The undersigned members of the Committee on Bill of Rights respectfully submit the following minority report to the amendment proposed by that Committee to Article I, Section 5, which proposed amendment reads as follows: On a conviction for a crime now punishable by death, the jury may by its verdict impose either the death penalty or life imprisonment, and in the latter event no pardon or commutation shall be granted, unless the innocence of the person convicted be established. In our opinion no change should be made in the Constitution on this subject, for the following reasons, among others: First, the matter is purely legislative and not constitutional. If the proposed amendment were placed in our fundamental law for the next twenty years and found to be detrimental to the people of the State it would become a great calamity. The States of the country have not generally dealt with this subject in their Constitutions; second, there is no apparent demand for such a change. The general feeling is, as we understand it, the administration of the criminal law should be

strengthened wherever possible and not weakened by provisions which might encourage crime. Third, the proposed amendment involves a rule of men and not of law. It would not be fair to juries to place upon them a responsibility which fairly and logically belongs to the State. The juries should determine the guilt but the State by its law should fix the punishment. The reverse of this will cause discord in the jury room and lead to many disagreements that otherwise would not occur and will cause a lack of uniformity in punishment. Fourth, the proposed amendment is in effect an attempt to abolish capital punishment, for few if any juries will inflict the death penalty if they avoid the responsibility. Fifth, the city of Greater New York with its varied and rapidly changing population is the last place in the world in which to try such an experiment. Sixth, we believe that a certain death penalty is the greatest deterrent against murder and that it is the duty of this Convention to conserve the safety of those who otherwise might be the victim of that crime. If the retention of the death penalty will cause murders in this State to be any less in number than they otherwise would be, it should be retained. The practically unanimous testimony of those charged with the administration of the criminal law is that in their opinion its retention would have that effect.

Respectfully yours, (Signed)

Morgan J. O'Brien,
Jacob Gould Schurman,
George H. Bunce,
Alfred G. Reeves,
Francis Martin.

Mr. Clearwater — I sincerely trust, sir, that the minority report of the Committee on Bill of Rights will be adopted by this Convention, and I regret to say that I express a conviction predicated upon 25 years' official connection with the administration of justice, during the course of which it became my duty to prosecute and from the bench to sentence many men convicted of the crime of murder in the first degree. Not only is it my judgment, sir, but it must be the ripened judgment of every thinking man, as it has been the experience of all civilized states, that there is but one absolute deterrent to the taking of human life and that is the stern application of the law of nature and the law of God. No matter what theorists and doctrinaires may say; no matter how many isolated and fanciful instances may be collated; no matter how many romances may be woven around fictitious charges of the convictions of innocent persons; the conviction of an innocent person of the crime of murder in the first degree has been so rare in modern jurisprudence and in modern civilization as to be absolutely a nugatory factor in the consideration of this important

question. Now it is not a gracious task to stand here in this Convention and in this distinguished presence and urge, as I now do, the adoption of this minority report, and it is only a very firm conviction that the best interests of the State, proper protection of society, the deterrence of murder, leads me to speak in this solemn manner as I do upon this very important question. With our civilization, with our increasing criminal population, the absence of restraint and of discipline, the tendency to wilfullness, it has become absolutely important that society should deal with men who take human life, not only in an austere but in the absolutely positive manner which has prevailed in this commonwealth from the period of its organization. This provision has no place in this Constitution, and I say that with all due deference to the distinguished Chairman of this Committee, whom I regard with an affection which is deep and sincere; it is purely a matter for the Legislature, not for the organic law, to put this into the organic law of this State, turn over to the caprice or the whim of easily influenced sentiment or emotion of twelve men (which the Constitution and the law should devolve upon the court) to put it beyond peradventure of recall for the next twenty years, is one of the gravest mistakes that this Convention could make. Relegate it to the Legislature, where if in the progress of events it becomes apparent that it is wise to abolish capital punishment, a condition that I do not believe, sir, will arise within the life of the coming generation, it can be done by legislative enactment. Do not write into the fundamental law of this State, at this time, this provision recommended by the majority report of this Committee.

Mr. Bayes — Mr. Chairman, and gentlemen of the Committee. It is altogether meet and proper that in the closing hours of this Convention we find ourselves considering a subject so vitally connected with the morals of the people. Lest any man within the sound of my voice be of the impression that this question lacks the element of reality, I exhibit a list of the names of two hundred persons whose lives have been taken by the State of New York since the establishment of electricity as the method of enforcing the death penalty in 1890. For many years I have studied this question with care. I have read and heard arguments pro and con. Those who favor the retention of capital punishment usually find themselves as a last resort reduced to the bald proposition that it acts as a deterrent. Personally I desire to support the report of the committee, because if there is anything in the deterred argument, it will be preserved by the proposed amendment. I dislike to disagree with Mr. Delancey Nicoll, but as I read section 1044 of the Penal Law, murder in the first degree is defined in the first

subdivision as follows: "The killing of a human being unless it is excusable or justifiable is murder in the first degree when committed from a deliberate and premeditated design to effect the death of the person killed or of another." Section 1045 fixes the the punishment for first degree murder at death. Section 1046: "Such killing of a human being is murder in the second degree when committed with a design to effect the death of the person killed or of another, but without deliberation and premeditation." So I say, as the law now stands, unless the jury is prepared to find the crime was committed without deliberation, without premeditation, the jurors are bound by their oaths to find the defendant guilty of murder in the first degree, and that means death. Gentlemen, that they have done so, is abundantly attested by this list, which I shall be pleased to have you examine. But my argument is directed to a far narrower point than this, and if I can engage the favorable consideration of the Convention, I shall be more than pleased. Years ago, Dr. Jacobi, one of the most eminent physicians in this State, or the United States, made a careful study of the relation of disease to crime. I shall not endeavor to sustain the proposition that there is such a thing as a criminal type of brain, but I do contend that there is a broad twilight zone between those whom we recognize as the semi-responsible and criminally insane on the one hand, and those whom we hold absolutely responsible, on the other. This phase of the situation should cause this Convention to hesitate and inquire whether, after all, it should not put its stamp of approval upon the report of this Committee. Dr. Jacobi has called the attention, I might say, of this Convention, to certain facts having a direct bearing upon this subject. Take into account, gentlemen, the prenatal conditions that may affect the structure of the human mind. In addition, congenital conditions must not be disregarded. We must remember, also that subsequent conditions and circumstances that must be taken into account. A slight derangement of the gray matter of the brain will develop a maniac or homicidal instinct. If perchance there should exist in the brain a remnant of some previous inflammation, it would affect the convolutions of the brain and likewise induce homicidal instincts. A temporary brain congestion may lead to the commission of murder. A small tumor, a blow upon the head, rheumatic fever, typhoid fever, and other maladies, may lead to the same result. To put it more concretely, I will say that I took the trouble of writing to the Warden of Auburn Prison and have procured a list of the persons executed since the installation of the electric chair in 1890. They number 44 in all. You may know, perhaps, that it is customary, after the execution, to hold an autopsy, which includes an examination, more or less minute, of the brain and physique of the person

executed. I procured this list and submitted it to Dr. Leitner, a member of this Convention. With him I checked up these reports and this is substantially the result: Of 44 cases, 27 were normal, 6 were shown to be clearly defective and 11 were shown to be clearly diseased. In other words, in the cases of a number of these men there were conditions that had existed possibly since birth; in others there were evidences of lesions, or tumors, making a total of seventeen including both defective and diseased. Gentlemen, that makes a percentage in excess of 50. The question, it seems to me, that we want to consider, and consider seriously, is whether this should not be treated rather as a medical or physiological question; whether the same principles of humanitarianism that we have long since conceded should be applied to the insane, to the semi-responsible, and who, gentlemen, a few generations ago, were ruthlessly put to death as possessed of the devil, or as witches, should not likewise be applied to those who have taken the life of another.

The Chairman — The gentleman's time has expired.

Mr. Byrne — Mr. Chairman, one certainly can never tell a book by its cover. Were I asked to pick out certain men in this Convention who I believed were in favor of abolishing capital punishment, I think way up on the list would have appeared the names of Mr. Reeves and Judge Clearwater. They are the last men I would have dreamed would advocate the keeping of capital punishment. I do not propose to devote any time, scarcely, to this question of capital punishment, except I want to say this: I do not believe that it ever deters anybody. The man who decides to take human life is thinking of the life he is going to get, not what is going to happen to him after he has got what he is after. The other man who takes human life, or the woman, does it in secret — poison. Do you think Carlyle Harris ever dreamed of the electric chair when he delivered the poisoned tablets? He never dreamed he would be detected at all. Do you think the burglar that kills at night has in mind the electric chair? No, he has in mind getting out of the house. He is not thinking of the electric chair.

Mr. Reeves — Is it not the man who has not committed murder that has been deterred?

Mr. Byrne — I would be glad, Mr. Chairman, to answer all questions, but as I have said, I have got to give this in modern tablet form. I am limited, and I ask you to wait until I get through, and then I will answer any question you want to ask. There is a man now in Sing Sing prison who was indicted for murder in the first degree. He came from another state and deliberately killed a woman in one of our cities. I happened to be connected with that case. That man believes to-day that he had an absolute right to take the life of that woman. Nothing will ever

change his mind. The first time he ever thought of the electric chair at all was when the question of taking a plea of murder in the second degree came up, and he said, "What will that mean?" "Life." "Not at all. Give me the chair. It is quicker." Now, I did not intend to dwell on the capital punishment end of this at all, but this is what I do want to say. Don't make twelve jurymen do, as Mr. Reeves says, what the people of the State are not willing to do. Don't ask these twelve men to say whether a man shall go to the electric chair. Can you not see the results of that? Why, twelve kind-hearted, soft-hearted men would refuse to send a man to the chair under given circumstances, and under exactly the same circumstances some other twelve men — of a kind I might mention — would send a man to the electric chair. It will not do any good. Don't impose that. The jury don't want any such thing. Would any of us, if we were on a jury, want that burden placed upon us? No. Either do as has been suggested, abolish capital punishment, or else leave things just as they are.

The Chairman — The Chair recognizes Mr. Clinton. The Chair desires to state that numerous requests have been made and he is endeavoring to follow the order of their submission, in justice to all the members.

Mr. Clinton — Mr. Chairman, this proposition has assumed more phases as presented by the committee than I had supposed it would when I stated that I was willing to say to this Convention what my opinions were on the subject of punishment for murder. The proposition here is not whether we shall abolish capital punishment or not except as that proposition is involved in one of the amendments, or perhaps two, which are presented. In many of the States — adverting to this proposed amendment — the question as to the extent of punishment has been left to the juries to determine. And that, I am sure you will find if you examine the statistics, has resulted in more convictions than the application of rigid rules of the statute fixing an absolute and defined punishment for particular offenses. In the case of murder, you will find that it has resulted in more convictions. In the case of murder in the first degree you will find that it has resulted in the imposition of the death penalty in fewer cases, many fewer than if the statute had fixed that penalty absolutely in the particular cases, if the jury had found verdicts of guilty of murder in the first degree. Personally, I am inclined to think that that has resulted on the whole, as it has resulted in more convictions, in aiding the due administration of justice and also in the diminution of homicide as a crime. I do not believe that there is any danger in leaving that power to a jury upon the ground that the jury will be soft-hearted, or too stern. I do believe that it is allowing the jury latitude where it feels convinced, if we retain the

present definition of murder in the first degree that we have in our penal law to-day — it would leave latitude for the jury where they felt convinced that there was the design and premeditation necessary to constitute that crime to find the accused guilty of murder in the first degree, and leave them the latitude to abide by their oaths and still impose the latter penalty instead of, as Mr. Nicoll suggests, evading the statute and the binding force of their oaths by finding a verdict of murder in the second degree, or manslaughter. Mr. Chairman, I must confess that I am seriously in doubt as to whether this is a matter for legislation or constitutional amendment. As has been said, if we put it in here, we fix an ironbound rule which, if experience proves it to be wrong, is not easily changed. The amendment which abolishes capital punishment deserves further consideration. My time is limited. I cannot go into it to any extent, but I wish to say this, that my experience as a lawyer, the knowledge which I have gained outside of actual criminal practice, because I have little of it — my observation from such study as I have made of penology teaches me, and I think will teach any man who studies the subject, that the imposition of capital punishment, the imposition of any punishment is not the real deterrent of crime. The real deterrent of crime is the accurate, speedy attainment of the end of justice by the securing of the evidence which warrants an indictment, the rapidity of the trial, the removal of all the useless technicalities which result in reversals and appeals and the unlimited opportunities for final escape, and when guilt is found, the speedy infliction of the punishment. That may not be attained in this State; it has not yet been attained. The administration of the criminal law in this State is a farce, an absolute farce. I do not refer to the action of district attorneys. They do their duties. It is the fault of the law as it stands, and its administration. I think we have taken some steps in this Convention toward removing those faults, but when you tell me that the infliction of the death penalty deters the defectives, deters the criminal classes, deters those who for revenge or jealousy may commit the crime, you tell me something that is not true. When you tell me that the certainty of speedy apprehension, trial and conviction is assured, you tell me that which will go further to deter people from committing crime than anything else that the human mind can design for the protection of society.

Mr. Wickersham — I move that we do now rise, report progress and ask leave to sit again.

The Chairman — All those in favor will say Aye, opposed No. The motion is carried. (The President resumes the Chair.)

The President — The Convention will come to order.

Mr. Foley — The Committee of the Whole reports that it has had under consideration General Order No. 63, reports progress thereon, and asks leave to sit again.

The President — The question is on granting leave to sit again on General Order No. 63. All in favor will say Aye, contrary No. The leave is granted.

Mr. Foley — The Committee begs to report further that it has favorably considered General Order No. 69 and recommends the advancement of the same to third reading.

The President — All in favor of agreeing to the report of the Committee of the Whole on General Order No. 69 will say Aye, contrary No. The Ayes have it. The report is agreed to, and the bill is advanced to the order of third reading.

Mr. Wickersham — Mr. President, I move that the time for the further consideration of the general order under discussion, No. 63, when the Committee of the Whole again takes it up, be extended by one hour, the speeches during that time to be limited to five minutes each.

The President — Is the Convention ready for the question upon the proposal to extend the time one hour, speeches to be limited to five minutes? All in favor will say Aye, contrary No. The motion is agreed to and the time is extended one hour, speeches to be limited to five minutes each. The Convention stands in recess until half past 8 o'clock this evening. Whereupon, at 6:15 p. m., the Convention took a recess until 8:30 p. m. of the same day.

AFTER RECESS—8:30 P. M.

The President — The Convention will come to order.

Mr. Wickersham — Mr. President, I suggest the absence of a quorum and ask that the roll be called.

The President — The Secretary will call the roll.

Upon the call of the roll the following delegates responded: Messrs. Adams, Aiken, Angell, Austin, Baldwin, Bannister, Barnes, Barrett, Baumes, Bayes, Beach, Bell, Bernstein, Berri, Betts, Blauvelt, Bockes, Brackett, Brenner, Burkan, Buxbaum, Byrne, Coles, Cullinan, Curran, Dahm, Daly, Dennis, Dick, Donnelly, Dooling, Doughty, Dow, Drummond, Dunlap, Dunmore, Dykman, Eisner, Endres, Fogarty, Foley, Ford, Franchot, Frank, Gladding, Green, Haffen, Hale, Harawitz, Heaton, Johnson, Jones, Kirby, Kirk, Landreth, Latson, Law, Leary, Leggett, Lennox, Lincoln, Linde, Lindsay, Low, Mandeville, Mann, Marshall, Martin, F., Martin L. M., Mathewson, Mealey, Meigs, Mereness,

Nicoll, C., Nixon, O'Brian, J. L., O'Brien, M. J., O'Connor, Olcott, Ostrander, Owen, Parker, Parmenter, Parsons, Pelletreau, Phillips, J. S., Phillips, S. K., Potter, Quiggs, Reeves, Rhees, Richards, Rosch, Rodenbeck, Ryan, Ryder, Sanders, Sargent, Saxe, J. G., Saxe, M., Schoonhut, Schurman, Sears, Sharpe, Sheehan, Shipman, Slevin, Smith, E. N., Smith, R. B., Smith, T. F., Standart, Steinbrink, Stimson, Stowell, Tierney, Tuck, Unger, Vanderlyn, Van Ness, Wafer, Wagner, Ward, Waterman, Webber, C. A., Weber, R. E., Westwood, Whipple, White, C. J., Wickersham, Wiggins, Williams, Winslow, Wood, Young, C. H., Young, F. L., President.

The President — 135 delegates having answered to their names, a quorum is present.

Mr. F. L. Young — Mr. President, if this is a proper time I regret that circumstances compel me to ask for an excuse from the session to-morrow morning and to-morrow afternoon. I will appear to-morrow night if necessary. This is a legal engagement made for me, not by myself, and I must ask it.

Mr. Rodenbeck — The Committee on Revision and Engrossment presents a report on two bills, and I would like to say with reference to one of these bills, the one fixing the salary of the Governor, that, as amended this afternoon, the bill makes no provision for the salary of the Governor during the year 1916.

The Secretary — Mr. Rodenbeck, from the Committee on Revision and Engrossment, to which was referred proposed constitutional amendment introduced by the Committee on Governor and Other State Officers, Int. No. 725, reports the same as properly engrossed.

The President — All in favor of agreeing to the report will say Aye, contrary No. The report is agreed to.

The Secretary — Mr. Rodenbeck, from the Committee on Revision and Engrossment, to which was referred proposed constitutional amendment by Committee on Governor and Other State Officers No. 866, Int. No. 782, reports the same as examined, found correct and properly engrossed.

The President — All in favor of agreeing to the report of the Committee will say Aye, contrary No. The report is agreed to.

Mr. Coles — May I ask to have the record of Wednesday, September 1st, corrected?

The President — I think it had better go over until to-morrow morning.

Mr. Coles — I should like also to have the report of the Committee on Militia and Military Affairs, which was filed here yesterday, printed as a document. I see it is not printed. Shall I leave that until to-morrow morning?

The President — Unanimous consent is asked that a motion be made for the printing — what is the document?

Mr. Coles — The report of the Committee on Military Affairs which was handed up yesterday.

The President — The rule requires that it be printed and it will be printed, attention having been called to it. It is probably in process now. Is there objection to granting the excuse asked by Mr. Frank L. Young, for absence from the morning and afternoon sessions of the Convention to-morrow? The Chair hears none, and, by unanimous consent the excuse is granted. The Secretary will read the title of the first bill on the calendar of third reading.

The Secretary — No. 866, by the Committee on Governor and Other State Officers. To amend Sections 1 and 4, Article IV, of the Constitution.

The President — The bill is now open for debate.

Mr. Wickersham — In adopting the amendment this afternoon in response to the Governor's letter, while we provided for a salary of $20,000 to begin on January 1, 1917, inadvertently, the salary in the interval is dropped out, and, as I suppose none of us desire the Governor of the State to serve during the year 1916 without compensation, I move to amend the bill by striking out the italicized matter in lines 1 to 5, page 2, and to substitute instead the following: "The Governor shall receive for his services an annual salary of ten thousand dollars until the first day of January, one thousand nine hundred and seventeen, after which the Governor shall receive for his services an annual salary of twenty thousand dollars. There shall be provided for his use a suitable and furnished executive residence." I will send the amendment to the desk in a moment.

Mr. Quigg — Mr. President, to that I wish to offer an amendment. I move to strike out of Mr. Wickersham's amendment all after the words "ten thousand dollars" down to the word "dollars", and I move to strike out the word "ten" and insert the word "twenty" in Mr. Wickersham's amendment so that his amendment shall read: "The Governor shall receive for his services an annual salary of twenty thousand dollars. There shall be provided for his use a suitable and furnished executive residence."

Mr. Wickersham — Mr. President, the amendment which I offered is for the purpose of conforming to the wishes of Governor Whitman. Mr. Quigg's proposal is to restore it to the condition in which the bill was when Governor Whitman wrote the letter which was read here.

Mr. Quigg — Now, may I say a word, Mr. President? I do

not think it is fair. The salary of the Governor of this State is inadequate, and we all know it. It is not right to make any man, poor or rich, work the way the Governor of this State has to work for ten thousand dollars. Anybody that is worth being Governor could earn five times that sum, and it is not right to the Governor of the State, whether it is Mr. Whitman or anybody else, whether it is now or hereafter, to make his salary ten thousand dollars. If you are going to make it twenty thousand dollars hereafter, then, in conscience, you ought to make it twenty thousand for him. I urge that my proposition be placed before the Convention.

Mr. Wickersham — Mr. President, I entirely concur in what Mr. Quigg has said about the adequacy or inadequacy of the salary of the Governor. The question involved is simply one of propriety, whether we shall increase the Governor's salary during his term. Personally, I think the Governor of this State ought to have a salary of at least twenty thousand dollars. I appreciate Governor Whitman's very proper feeling on the subject and I simply submit the question to the Convention. My own personal desire would be to increase his salary. There is the question of propriety and I am somewhat in doubt as to whether we ought to put Governor Whitman in the position of having his salary increased during his term.

Mr. Quigg — We do not put him in that position. He has done what he could in the matter, and he has done right.

Mr. Bunce — I really believe, Mr. President, that the Governor should have a salary of twenty thousand dollars. I want to vote for that, but I do not believe that the present Governor ought to have his salary increased to twenty thousand dollars for the last year when he was elected for ten thousand dollars. I do not understand very well what the situation is but I want to have the salary of the Governor twenty thousand dollars for twenty years after the term of the present Governor expires.

Mr. J. S. Phillips — I certainly hope that the amendment offered by the gentleman from Columbia will not prevail. It seems to me the Convention having acted upon the letter which was written by the Governor, written, I believe, in good faith, and the Convention having acted upon that suggestion and provided that the increase of salary should not take effect until January 1, 1917, I think the Convention should adhere to the amendment which was adopted this afternoon, and I hope that the amendment of the gentleman from Columbia will not prevail.

Mr. Harawitz — Mr. President, I hope the amendment of my friend, Mr. Quigg, will prevail. It is settled, it seems to me, by the vote this afternoon, and everybody agrees that the salary of the Governor of this State is inadequate, and if it is to be increased

at all, if it is to be increased in 1917, if the principle is right then it is right now. Now, the Governor of the State, I can understand his position very well, and he has gone on record by the letter he submitted this afternoon, but I think it is for us, nevertheless, to show the feeling of this Convention that we appreciate that the Governor of this State is entitled to the salary, and I think that this amendment should prevail, and I hope it will pass.

The President — The Secretary will read the amendment, which Mr. Wickersham desires to have made.

The Secretary — By Mr. Wickersham. On page 2, line 1, strike out the italicized matter and insert the following: "The Governor shall receive for his services an annual salary of ten thousand dollars, until the first day of January, 1917, after which he shall receive for his service an annual salary of twenty thousand dollars. There shall be provided for his use a suitable and furnished executive residence."

The President — The Secretary will read the proposed amendment to the amendment offered by Mr. Quigg.

Mr. Quigg will send his amendment to the desk.

Mr. Quigg — Mr. President, it is to strike out the word twenty — the word "ten" and insert the word "twenty" and then to strike out everything else in Mr. Wickersham's amendment except that there shall be provided for his use a suitable and furnished executive residence.

The President — All in favor of Mr. Quigg's amendment will say Aye, contrary No. It appears to be lost and is lost. All in favor of recommitting the bill with instructions to amend as indicated by Mr. Wickersham and report forthwith will say Aye, contrary No. The motion is agreed to. Any further debate upon this bill? The debate is closed. The bill will be laid aside for reprinting before the reading of the text. The Secretary will read the title of the next bill upon the calendar.

The Secretary — No. 860, by Mr. Franchot, to amend Section 8, Article V, of the Constitution, in order to permit the non-compulsory inspection and grading of food products.

The President — Is there any debate desired upon this bill?

Mr. Leggett — Mr. President, I have no desire or wish to say that any member of this Convention has not investigated this proposal so that he knows just the reasons that induced the insertion of the original article in 1846, or just what it will lead to by this amendment. But, as a member of the Committee, I gave it some attention and for fear that some of the things that I have discovered may have escaped the attention of some of the members of this Convention I ask you just a moment to listen to me. Originally, this was proposed in the Constitution of 1846 by the Committee on Minor State Officers. It is there, Section 6, and it

starts off by saying this: "No law shall be passed creating or continuing any office for the inspection of any article of merchandise." It did not say anything about weighing, or culling or measuring. It was simply to do away with officers for the sake of inspection. Later, it was amended to include the other classes. Now, some of the members of the Convention were quite familiar with the evil that that sought to cure. Mr. Murphy, for instance, said "that he was quite in accord with the amendment reported by the Committee, and he only sought to carry out more fully the principle inserted in the section. There were many officers besides those of inspection, partaking of the same character, and equally impolitic and unjust, which ought to be abolished; and had framed his amendment so as to embrace them. Laws for the purposes of inspection were passed as early as 1784. In one, enacted in 1790, the object is in a preamble declared to be to render the commodities more valuable in foreign market; under such a pretext has grown up the gigantic system which has established several hundred of the officers in question, whose support, as he would show, was a tax upon the industrial classes of the State without effecting the object originally designated. The effects of our inspection laws have been equally injurious to our commerce." Another gentleman who really voted against the amendment admits this: He says, "He was opposed to compulsory inspection laws. Those features had been allowed to go out of use and no person was now obliged to have an article inspected unless he desired it." Now, that is what is claimed for this bill, that it is for non-compulsory inspection. The chairman of the Committee said, "an important object was to diminish the executive patronage and to relieve the executive of the horde of office seekers and office abettors who hang around the capitol every year. It was said the whole matter could be left to the Legislature. He had seen enough since he had been here to despair of any reform being affected here. Since this report had come in inspectors from New York had been here besieging him and he doubted not that other delegates had been in like manner besieged. When a Legislature should reform this inspection then should we find white crows and the sky should rain larks. He would abolish all this inspection and put every man in the community upon his own honesty." Now, I want to reiterate the fact that this inspection which they were trying to get rid of was the very kind of inspection that is opened up in this amendment, that is, of a non-compulsory kind. "The Legislature in 1813 acknowledged it when they abolished compulsory inspection, weighing and measuring, yielding to the demands of the producers, traders and consumer. The public press and political conventions in various portions of the State have urged it upon us; and none more so than

his own county." Then another speaker, referring to it, said: "The year after compulsory inspection, weighing and measuring was abolished, a law was passed requiring all those who did have their commodities inspected, weighed or measured, to employ official weighers, measurers and inspectors. The consequence was that the evils of the system remained in as full force as before." Mr. President, I could read from the addresses of those members of the Convention of 1846 who were familiar with this matter, who knew what they were talking about, twice as much as I have read, but I realize the time is short, and I only wish to say a word further, that the —

The President — The gentleman's time has already expired.

Mr. Leggett — Mr. President, just one word more. I wish to say that this amendment was passed in the shape that it is at the present time by a vote of 92 to 10 in that Convention.

Mr. President, I move that this proposed amendment be recommitted.

The President — The motion to recommit is not debatable. All in favor of the motion to recommit will say Aye, contrary No. The Noes appear to have it and the Noes have it. The motion is lost.

Mr. Austin — Mr. President, I am fully aware that the temper of this Convention is not at this present moment in favor of amendment, but I should feel that I had not done my duty if I did not offer an amendment to this section. The amendment which I send to the desk is to strike out the words "inspection and" in line 3, of page 2. There is just a word I wish to say as to why I propose to strike those words out. There is not the slightest shadow of a doubt but that under the present constitutional provision you have a perfect right by legislation to require compulsory inspection of food products, if such inspection is necessary to protect the health of the people. Now, what do you do? If this proposal is to be interpreted according to the ordinary rules of statutory interpretation, you have by its enactment prevented compulsory inspection of food products. If this proposal is to be interpreted according to the ordinary rules of statutory interpretation you by this enactment prevent compulsory inspection of food products, because you have a specific provision that this shall not prevent the creation of any office for the non-compulsory inspection of food products. Under the ordinary rules of statutory interpretation if you provide that statutes may be passed for the non-compulsory inspection of food products you negative compulsory inspection even though it may be necessary for the protection of public health. Now, I understand the purpose of Mr. Franchot's amendment and I am in entire sympathy with him,

but I think the word "grading" covers everything which he wishes to cover, which is to secure an official certification that the products are of a certain grade; that they are approved; and I think that the insertion of the words "inspection", "non-compulsory inspection" are extremely dangerous and are bound to result in litigation which may be disastrous to a practice well established.

Mr. Wiggins — I want to say a word, but I shall be glad before I speak to ask Mr. Franchot if he will explain the purport of his amendment. I am very apprehensive of its provisions and I shall be glad to have those apprehensions removed.

Mr. Franchot — I hope the motion of Mr. Austin will not prevail. I think the point he raises is purely fanciful. He says that by accepting the provision as it now stands, that thereby you negative the establishment of offices for other purposes within the statutes which have been in force since the very enactment of the section in question. It is well to bear in mind that whatever inspection the State now does of food products it does not perform by virtue or grant of any authority therefor by this section. It does it purely and simply under the general police power of the State to protect the health of the citizens of the State. Now, it can do that in various ways. When this section was originally enacted, there was an exception made which allowed the State to do it by the appointment of officers for inspection. That remains exactly as it has been for seventy years, if the amendment as proposed by me is adopted. The words in italics on page 2 merely add another class of offices which the State may establish; it allows the State to inspect and grade food products for purposes in addition to the protection of public health. But by saying that they may do that in addition to the purpose of protecting the public health, it seems to me that no construer of statutes or of constitutions could contend that they have negatived the exception which already exists. I think that Mr. Austin's point is purely fanciful. I will say to Mr. Wiggins that the purpose of this amendment is set forth in the report of the Committee of Industrial Interests and Relations which has been on the desks of the members for a long time. In addition to that I think perhaps I might well read a statement from a letter of the Attorney-General of the State of New York in which he says, after apologizing for "butting into" the affairs of the Convention: "The present high cost of living is of serious moment and the causes thereof and how it may be reduced is engaging the earnest thought and attention both of public officials and students of economic problems. This office, as the result of recent investigation, has become thoroughly convinced that a considerable part of this increased, and I may say unnecessary cost, is plainly attributable to improper

and fraudulent grading of commodities by middlemen and through economic waste, through excessive cost of distribution. Other contributing causes exist, but these two are extremely important factors. That these conditions result in a loss to both the producers and the consumers requires no argument. It is a fact, recognized by students of the subject, that of the sales price of food products an average of approximately 60 per cent goes as profit to middlemen and for cost of distribution and only about 40 per cent. to the producer. And it is also recognized that a substantial part of this 60 per cent. is economic waste." From the letter he says further on: "I feel quite certain, however, that as a part solution of the problem the State must step in and exercise a proper degree of supervision of foods and markets, particularly in the more populous centers, and that such supervision will result in substantial benefit to both consumer and producer. This will undoubtedly call for the inspection and grading of food products to some extent, although it need not be made compulsory. Your proposed amendment recognizes this non-compulsory idea but would enable the Legislature to pass laws which I believe would greatly benefit our present conditions without improperly curtailing the rights of the individual citizen. I have read with care the report of the Committee on Industrial Interests and Regulations which had this proposed amendment under consideration, and made a favorable report thereon to the Convention and agree therewith." I don't think, Mr. President, that it is necessary for me to say anything further in explanation of the purpose of this measure. It is plain that it is merely intended to allow the Legislature that free hand to approach the problem, the economic problem of the excessive cost of living, which is contributed to chiefly, as we all perhaps know, by the high cost of food products. This provision creates no office, but merely provides that, for instance, if the city of New York should be authorized to, and deem it proper to, establish a public market, that they might in connection with it establish that essential feature of a public market, namely, an officer to establish standards and grades of products dealt in.

Mr. Wiggins — If they do — I would like to have you answer this question — if they do establish a market, would that not compel under this, permit them to compel the man to submit his food products for inspection, grading and supervision before he sells?

Mr. Franchot — Not under my provision, they could not, and that is the reason for the insertion that the officer or the officers established for the purpose of inspection would have no right, nor the State, to compel any man to have anything inspected.

Mr. Barnes — Then what do you accomplish?

Mr. Aiken — Mr. President, under the law as it is now, the State has the right to inspect and grade, so far as health is concerned. They do it with reference to A, B and C grades of milk according to the number of bacteria to the cubic centimeter, and it seems to me Mr. Austin's amendment should not prevail. This is not a question of health, for you take the case of eggs: I suppose a stale egg is just as healthful to eat as a fresh egg. But the age of the egg is something which the consumer would like to know. I find eggs graded "Fresh gathered, extra fine", "Fresh gathered, extra firsts", "Fresh gathered firsts", "Fresh gathered seconds", "Fresh gathered thirds and poorer", "Fall refrigerator finest", "Fall refrigerator poor to good", "Refrigerator early packed, special marks fancy", "Refrigerator firsts", "Refrigerator seconds", "Refrigerator under grades", etc., etc. "State of Pennsylvania and nearby, hennery whites, fine to fancy; State of Pennsylvania and nearby, hennery whites, defective in size or quality; State of Pennsylvania and nearby, gathered whites, Western gathered whites; State of Pennsylvania and nearby, hennery browns; held fresh Meadowbrook, etc." And it reminds me of a story about Whistler, who, passing judgment upon a painting, said that it was "Tolerable." A friend of his objected to that classification as too much praise, and Whistler said, "Well, what would you think of a tolerable egg?" I believe half of the eggs of fancy names are just "tolerable" eggs, and the purpose of this bill is to stamp eggs according to their age, so that the man will know whether he is getting eggs a week old or a month old or six months old; and so perhaps with other products. It is a different age from what it was in 1846, and in this great city of New York the people should be protected in the articles they buy, the food they buy, and that is the purpose of this amendment, and the Attorney-General's office would not have asked for it except in the interest of the people of that city and the State.

Mr. Baldwin — How many inspectors would it take to officially stamp all the eggs, officially stamp them for New York city?

Mr. Aiken — This would not be a compulsory inspection. The producers who wanted to have their eggs inspected could go to an official and have them stamped.

Mr. Mereness — Mr. President, may I suggest to Mr. Baldwin that there is an application for a patent in Washington for a rubber automatic stamping device to be attached to the hen —

The President — Is there further debate? Does any other delegate desire to debate this bill?

Mr. Barnes — As far as I can gather from Mr. Franchot's

answers made to Mr. Wiggins' inquiries, this bill does not do anything. He said it is not compulsory and yet it is going to reduce the cost of living. It seems to me we have heard a great deal about reducing the cost of living by all kinds of perfunctory acts, calling for more inspection and more expenditure. Every dollar of public money that is wastefully expended increases the cost of living and does not reduce it. There has been a great deal said for the deception of the public mind upon this matter. There has been a great deal said for a number of years. Foolish expenditure is what adds to the cost of living. A large amount of the expenditure that has been asked for in the line of legislation which I have opposed — in the Bill of Rights proposal there is the proposition that the State shall not give money to any individual. Mr. Nicoll refers to it as a "Barnes proposal." Here it is proposed that it should be established in the Constitution that the State of New York should give away its money. Mr. Franchot's bill does not do anything; I do not see any reason why it should be passed. That is the statement which he makes. If by passing this we think we are going to reduce the cost of living, we are involving the public in a deception.

Mr. Franchot — You must have misunderstood my statement.

Mr. Barnes — What does it do?

Mr. Franchot — It simply was a statement to the effect that this measure merely frees the hands of the Legislature to deal with the problem as may seem best after a full investigation by experts, and its application to the establishment possibly of a public market in the city of New York or elsewhere in connection with the —

Mr. Barnes — A public market established by the State of New York? Is the State of New York going into the egg business? Is that the proposal?

Mr. Franchot — No, that is a further misapprehension of my statement.

Mr. Barnes — Well, that is what you just said, that the State of New York should go into a public market in the city of New York.

Mr. Quigg — Mr. President, will the gentleman yield? It means this, that those of us who produce agricultural products may, if the State appoints inspectors, submit our products to them and they may be stamped and may have that advantage, the advantage of fact with regard to them. That is what it means.

Mr. Barnes — That is not what Mr. Franchot says it means. He says it means the Legislature shall establish a market in the city of New York, through the agency of the State of New York. It would seem to me that a measure fraught with so much uncertainty should hardly be put in the Constitution.

Mr. Low — I think the practical effect that is desired is this, to make it possible for producers to sell their products on grade instead of by sample, and to make it possible for purchasers to buy on grade instead of by sample. There is no doubt whatever that the absence of good grading in natural products of the soil is a very great loss to the producers as a whole and a very great source of cheating and loss on one side or the other. This is a move, the object of which is to facilitate the organization of business dealing in products of the soil by standard instead of by sample. It has been done in all of the large products on the market — wheat and all the rest of it — but without the aid of the State, such inspection as this bill makes possible, it is almost impossible to bring it about on such things as potatoes, apples, and other perishable products. That, I think, is the object of the measure. It seems to me a good one and not to be fraught with danger.

Mr. Barnes — You do not hold, then, as Mr. Franchot does, and you do not wish the advertisement to go out to the people of this State that, if we pass this measure, we are going to reduce the cost of living?

Mr. Low — No, Mr. Barnes, I do not want to hold out any idea.

Mr. Barnes — I do not want any deception of the people. That is all.

Mr. Low — It may have such an effect; I cannot tell. What I do know is that it is in the interest of both the seller and the buyer of perishable products to have them graded in such a way that a man knows when he buys what he is going to get, and, when he sells, can get the value of what he offers.

Mr. A. E. Smith — I desire to call the attention of the Convention to the fact that it is now twenty-five minutes after nine, and we are on a third reading calendar, with a general order calendar containing some important bills that a great many delegates to this Convention are very deeply interested in and have sat around here waiting for a chance to speak on them. I think we should not lose any more time on measures of this kind and I move the previous question.

The President — The previous question cannot be entertained upon the third reading of a bill. The rule provides that the bill shall be open for debate for one hour before the previous question can be moved.

The President — Is debate closed? Does any other delegate desire to debate this bill? The debate is closed and the Secretary will read the text. I beg pardon, there is an amendment. The question will be upon Mr. Austin's amendment. The Secretary will read the amendment.

The Secretary — By Mr. Austin: On page 2, line 3, strike out the words " inspection and ".

Mr. Franchot — Mr. President, I understand that is a motion to recommit, which, in effect, would defeat the measure. I call attention to that.

The President — Mr. Austin moves to recommit the bill to the Committee of the Whole with instructions to report forthwith amended as indicated by the Secretary. All in favor of the motion will say Aye, contrary No. The Noes appear to have it. The Noes have it and the motion to recommit is lost.

The Secretary will read the text of the bill.

The Secretary — The Delegates of the People of the State of New York, in Convention assembled, do propose as follows: Section 1.

The President — The Secretary will call the roll. All in favor of the adoption of the proposed amendment will answer Aye as their names are called and those opposed will answer No.

Those who voted in the affirmative were: Messrs. Adams, Aiken, Angell, Baldwin, Barrett, Bayes, Beach, Bell, Bernstein, Berri, Blauvelt, Brenner, Burkan, Buxbaum, Byrne, Clearwater, Cullinan, Curran, Dahm, Daly, Dennis, Donovan, Dow, Dykman, Eisner, Fancher, Fogarty, Foley, Franchot, Gladding, Green, Griffin, Hale, Harawitz, Johnson, Jones, Kirby, Law, Lincoln, Lindsay, Low, McKinney, Mandeville, Mann, Nicoll, C., Nixon, O'Brian, J. L., Ostrander, Parmenter, Parsons, Quigg, Rhees, Richards, Rodenbeck, Ryan, Sanders, Sargent, Saxe, M., Schoonhut, Sears, Smith, A. E., Smith, E. N., Smith, R. B., Smith, T. F., Standart, Steinbrink, Stimson, Stowell, Tuck, Wafer, Wagner, Ward, Waterman, Webber, C. A., Weber, R. E., Weed, White, C. J., Wickersham, Winslow, Wood, Young, C. H., Young, F. L., President — 83.

Those who voted in the negative were: Messrs. Allen, F. C., Austin, Bannister, Barnes, Baumes, Bunce, Clinton, Cobb, Coles, Deyo, Donnelly, Dooling, Doughty, Drummond, Dunlap, Dunmore, Endres, Eppig, Ford, Frank, Greff, Haffen, Heaton, Kirk, Landreth, Latson, Leary, Leggett, Lennox, Linde, Martin, F., Martin, L. M., Marshall, Mathewson, Mealey, Meigs, Mereness, Nicoll, D., O'Brien, M. J., O'Connor, Owen, Parker, Pelletreau, Phillips, J. S., Phillips, S. K., Reeves, Rosch, Ryder, Saxe, J. G., Schurman, Sharpe, Slevin, Tierney, Vanderlyn, Van Ness, Wheeler, Wiggins, Williams — 58.

When Mr. Austin's name was called he said: Mr. President, in explaining my vote, I just want to say this, that in enacting this amendment in its present form you are making a constitutional provision which will be jumped at with joy by the attorneys for

every cold storage corporation in the State of New York. You do not know what you are doing. This is all I wish to say in explanation of my vote. I vote No.

When Mr. M. Saxe's name was called he said: Mr. President, I desire to explain my vote. I seriously regret that this measure does not seem to be appreciated by this Convention. Now, this proposal makes possible the setting of official standards, so that the commission merchants cannot fix their own standards and fix their own prices at the same time. That is one of the greatest vices, one of the greatest economic vices, the whole country is suffering from and this proposal makes such a change possible. I vote Aye.

Mr. Mann — When I voted upon this proposal, I was under the impression it was one of those amendments that would foist a number of additional inspectors upon the State, and in that respect make for waste and extravagance, but after Mr. Saxe so vigorously explained what the purport of the amendment was, I experienced a change of heart, and I want to change my vote and vote Aye.

The President — The vote in the affirmative is 83; in the negative 58. The amendment having failed to receive the affirmative vote of a majority of all the delegates elected to this Convention, it is not adopted.

Mr. Rodenbeck — May I present a report of the Committee on Revision and Engrossment on the bill advanced this afternoon, reported by the Committee on Legislative Organization? There seems to be some confusion in some of its provisions. The Committee reports the bill without amendments, merely incorporating all the amendments made in it by the Committee of the Whole. The Committee did not feel at liberty to make the changes in the bill which seemed necessary.

Mr. Franchot — Mr. President, I make the motion to reconsider the vote whereby the amendment just voted on was lost, and ask that that motion lie upon the table until the next order of third reading.

The President — Mr. Franchot moves to reconsider the vote on the passage of this bill and that the vote lie on the table. All those in favor will say Aye, those opposed No.

Mr. Harawitz — Rising vote.

The President — The question is upon laying upon the table the motion to reconsider. All in favor of laying upon the table the motion to reconsider will rise and remain standing until counted. The gentlemen will be seated. Those opposed will rise. The gentlemen will be seated.

Those in favor, 82. Opposed 40. The motion to reconsider is

laid on the table. The Secretary will read the report of the Committee on Revision and Engrossment.

The Secretary — Mr. Rodenbeck, from the Committee on Revision and Engrossment, to which was referred proposed amendment introduced by the Committee on Legislative Organization, No. 867, Introductory No. 722, reports the same as examined, found correct and properly engrossed.

Mr. E. N. Smith — Mr. President, if it is in order, I offer the following amendment.

The President — It is not in order.

The Secretary will read the title of the next bill on the calendar.

The Secretary — No. 864, by Mr. Parsons, to amend article three of the Constitution, in relation to the power of the Legislature to prohibit manufacturing in tenement houses.

The President — The amendment is open to debate under the rules.

Mr. Sargent — I desire to offer an amendment, and ask that the bill be recommitted, with instructions to amend, and report forthwith.

The President — The Secretary will read the amendment.

The Secretary — Mr. Sargent moves to amend as follows: On line 5, after the word "houses", add "as such houses are now defined by statute".

Mr. Sargent — Mr. President, the amendment — the proposal, rather, as amended, would read as follows: "The Legislature shall have power to regulate or prohibit manufacturing in tenement-houses, as such houses are now defined by statute". Now, we have two statutes which define a tenement-house. We have the tenement-house law and the labor law, and in both, the definition of a tenement-house is substantially alike. The term "tenement-house" in the labor house law, is defined as follows: "The term 'tenement-house' when used in this chapter means any house or building or portion thereof which is either rented, leased, let or hired to be occupied or is occupied in whole or in part as the whole or residence of three families or more, living independently of each other and doing their cooking upon their premises, and includes apartment-houses, flats, and all other houses so occupied, and for the purposes of this chapter shall be construed to include any building on the same lot with such tenement-house which is used for any of the purposes specified in section 100 of this chapter". The definition of a tenement-house in the labor statute is practically the same. My idea in seeking an amendment of Mr. Parsons' proposal is to limit the term "tenement-house" to a house occupied by three or more families, as now defined by statute. I do not think that the definition of the term "tenement-house" as used in Mr. Parsons' proposal is limited to the present

definition in the labor and tenement-house laws. The Legislature could make a new definition of that term and ultimately say that dwellers in a two or even a one family house shall not do manufacturing therein, or that such manufacturing therein shall be regulated. We go far enough if we say that manufacturing in a house occupied by three or more families may be prohibited or regulated. It does not seem to me that it would be right or fair to say to the occupant of a one family house, or of a two family house, that he must not do any manufacturing therein, or if he does so that he shall be subject to State regulation. That would be too much of an interference with individual liberty. I agree with Mr. Parsons that manufacturing by dwellers in houses occupied by more than three families ought to be regulated as it now is, but it would be a grave injustice to regulate manufacturing that is done in the home of a milliner, dressmaker or glove maker or the manufacturer of any article, who lives in a house occupied by one or two families. The basis for Mr. Parsons' proposal is that manufacturing done in large tenements in which a great many families dwell, results in bad conditions, in disease, injuring in some cases the persons so employed and in other cases the injury being done to the outsider who purchases diseased merchandise. It is not claimed that such bad conditions result from manufacturing done in the one or two family house. Therefore I say that the Legislature ought not to be left with the power to make a new definition of the term "tenement-house" which might bring within the scope of Mr. Parson's proposal dwellers in one or two family houses. I hope that this amendment of mine will prevail.

Mr. Wagner — Mr. President, I hope the amendment which has just been offered will not prevail. For the first reason, that at this late stage of our meeting, of our Convention, an amendment now is apt to endanger the final passage of this proposal, and while I do not impugn the motives of the introducer of this amendment, the procedure has been used in legislative bodies in the closing days of a session to defeat legislation. Secondly, what is there in this proposal, or what is there in the history of the Legislature, that we must so curtail and curb their powers, as to entrust them with nothing practically, except the ordinary work, requiring the use of no judgment? Now, we have in the past relied upon the Legislature to define what a tenement house is, and nobody has complained that the Legislature has made an unfair or unreasonable definition or has passed legislation which oppressed our citizens. What is there in our legislative history that we should at this time mistrust our Legislature? On the contrary, as to all this social and economic legislation we discuss, we should give the Legislature the fullest power and authority, so that they may at once respond to a worthy public sentiment for legislation

of that character. Now, the gentleman is disturbed, no doubt, because of the suggestion made by Mr. Leggett this afternoon, that some of the cheese manufacturers up in his district may be prohibited from manufacturing cheese because the owner lived in the dwelling house. Under the law as it is to-day, the tenement house law does not affect that sort of a case at all, and you can rely upon the farmer to protect himself through his legislator, so that nothing oppressive will be enacted. I remember only two years ago when the One-day-of-rest-in-seven law was passed, applying to the factories throughout this State, that at least out of every seven days employees should be entitled to one day's rest. And yet, you look at the exceptions in that law, and you will find how very active the country legislator was to exempt any kind of a factory in which the rural community of the State was interested. So, you need not fear that the Legislature, because you give them this power, are going to pass oppressive legislation, and by one swoop drive out of this State the manufacturers, small or large, and this is not passing any legislation prohibiting all sorts of manufacturing in tenement houses. It only gives the Legislature power, if a serious situation exists, which affects the general welfare of the State, that they may meet it without a constitutional amendment, and I plead with the members of this Convention, for the sake of the humanitarian qualities in this provision, that they do not adopt this amendment in this closing hour nearby, of this Convention, which would mean, I think, defeat for the provision.

Mr. Parsons — I hope Mr. Sargent's motion will be defeated. It is unnecessary, and it might accomplish the very opposite of what he intends. Now, the term "tenement house" is defined in two statutes, the Labor Law and the Tenement House Law. The other day, when the matter was in Committee of the Whole, I read into the Record so much of the definition in those statutes, as is common to both statutes. Now, the Labor Law, in addition to what I read, says that "a tenement house includes any building on the same lot with such tenement house, and which is used for any of the purposes specified in 100 of this chapter". Now, if you say you mean a tenement house as defined by statute, you may include another building, which ought not to be included, so that Mr. Sargent's amendment will defeat its very purpose. That is entirely unnecessary.

Mr. Wickersham — Mr. President, I hope this amendment will not be adopted. You cannot import, or at least we ought not to import the definition in these two statutes as a permanent limitation in this provision upon the possible application of the power here conferred upon the Legislature. If you do, you prevent the courts from determining from time to time what is a tenement

within the mischief which this law is designed to reach and remedy. And we will accomplish precisely what we do not want to accomplish, at least those in favor of this measure, if we tie down by this statutory definition the application of this measure. Otherwise, having the broad treatment which we have put here, the court may determine from time to time whether the particular class of structure affected is within the mischief we sought to reach by this provision.

Mr. Dunmore — The vicious part of this amendment is the power which it gives the Legislature to prohibit manufacturing in tenement houses. Now, the definition of what a tenement house is was read by one of the other speakers, but I wish to call attention to the latter part of that definition. It says, " for the purpose of this chapter, a tenement house shall be construed to include any building on the same lot with a tenement house, and which is used for any of the purposes specified in section 100 of this chapter ". Now, Section 100 of this chapter defines the very kind of manufacturing in homes that I mentioned when this question was before the Committee of the Whole. In the city of Utica, as I stated, there are hundreds of poor families where the wife or mother and her daughters are piecing out the income of the family by taking in garments to make. In Gloversville and Johnstown they are piecing out the income of the family by taking in gloves to make in the home, as they are in many other cities and towns of the State. So that there are thousands of poor families in this State that are piecing out their incomes, women who are supporting themselves, widows and their daughters who are supporting themselves and keeping themselves from becoming a charge on their friends, or a public charge, by taking in work at home where they do the housework for the family, and in the spare hours of this kind of work to earn a living. Now, Mr. Chairman, Section 100 of this law provides the conditions under which this kind of manufacturing may be carried on. In the first place, it forbids the manufacturing of this kind unless the person first obtains a license. They cannot obtain a license to do this kind of work unless the conditions are such as will be safe for the public. It must be cleanly. It must be free from disease. There must be nothing which would in any way endanger the public either by contagious disease or otherwise. The license can be revoked and the manufacturing under those conditions stopped. Now, Mr. Chairman, I speak of this because that is ample under the police power of the State, to protect the State from any harm by reason of this. And when you say the Legislature shall have the power to absolutely stop this income of the poor families, I say it is a piece of vicious legislation and this Convention ought not to stand for it.

There are thousands of working women who are piecing out the income of the family, or helping to pay for a home, or laying by money for a rainy day, or for old age, under just as sanitary and cleanly conditions as are in your home, or ours. Now, you give the Legislature power to apply that, and I tell you there are influences against this that do not want this competition, that will get the Legislature to stop it, and I will venture a prediction that within two years, if this amendment passes, there will be no manufacturing of that kind allowed in the State. It is a hardship upon the poor people of the State and it ought not to prevail in this Convention.

Mr. E. N. Smith — I ask unanimous consent to recommit bill 867, now on the calendar but not reached, to the Committee of the Whole, with instructions to report forthwith, with amendments, as indicated. They are amendments to correct errors in the original print of the bill and not changing in any respect the substance of the bill.

The Chairman — Is there objection? The chair hears none.

Mr. Griffin — If this bill is going to go back for amendment, I would like to call attention to another ambiguity in section 8. Mr. Marshall succeeded in restoring that section through the draft of the amendment on page 18, after it had been eliminated by the Committee. The section provided that nobody should be eligible for the Legislature who held certain offices within a hundred days of election. And it seeks also to exclude those from the right to receive other official positions who are elected to Congress or any civil or military office under the government of the United States or any city government. Now, Mr. Marshall's amendment struck out the first provision and left the last which reads as follows: "If any person shall, after his election as a member of the Legislature, be elected to Congress or appointed to any office, civil or military under the government of the United States or any city government, his acceptance thereof shall vacate his seat". But this says nothing whatever about the condition of a man occupying a position under the United States government or any city government and being elected to the Legislature. I think that position it was intended in the original section to provide for, and I think if this bill goes back, the wisdom of restoring that matter ought to receive the attention of the Committee.

Mr. Dunlap — Mr. President, while they are preparing their amendments may I say a word about the pending bill?

The President — I imagine we had better speak to one thing at a time. Mr. Smith asked unanimous consent to correct some errors, not of substance, in a bill on the third reading calendar, not yet reached. No one objected, so that unanimous consent was

given to make those corrections. The purpose was to allow the bill to go back to the printer to-night. The bill is not open to general amendment, amendment of substance, or on the order of debate. The House can vote upon the particular changes of a clerical character which Mr. Smith proposes, but we cannot go into general debate on the bill. The unanimous consent does not apply to that. The Secretary will read the proposed motion.

The Secretary — By Mr. E. N. Smith: Amend Proposed Amendment, printed No. 867, third reading No. 34. On page 12, line 14, strike out the period and the italicized matter. On page 12, line 15, strike out the italicized matter and the period in brackets. On page 12, line 20, strike out the italicised matter. On page 12, line 21, strike out down to and including the period. On page 12, lines 24 and 25, strike out the words "assembly districts reapportioned as herein provided" and insert in italics "apportionments of members of Assembly". Page 12, line 26, strike out the word "reapportionment" and insert the word "apportionment". Page 16, line 7, change the comma after the word "made" to a period. Page 17, lines 8 and 9, insert as a paragraph in italics the following: "Assembly districts as at present constituted shall remain unaltered until altered as herein provided".

Mr. Dooling — Mr. President, a question of information, if this is to be reprinted. May I ask the question?

The President — Certainly.

Mr. Dooling — Provision was made this afternoon for a change so that in the city of New York the members elected to the board of aldermen from each county would apportion the Assembly districts. If under the home rule provisions of the Constitution adopted a few days ago, the city of New York should adopt a commission form of government, and in that commission form of government there was not a commissioner from one county, I would like to inquire how the Assembly districts in the county would be apportioned? The result of it might be that this might continue in the board of aldermen for the life of this Constitution.

The President — The Chair does not regard that as a parliamentary question.

Mr. E. N. Smith — My attention has been called to another verbal error on page 10, at the bottom of the page, line 25 where it reads, "each year after the tabulation", it should read "the year after the tabulation of each federal census". I would like to have that error corrected.

The President — The question is on the motion to amend, made by Mr. Smith. All in favor will say Aye, contrary No. The motion is agreed to, and the bill will lie over.

Mr. Dooling — Mr. President, I understand that no amendment will be entertained now, in order to enable the bill to be fully corrected before printing.

The President — That cannot be done without unanimous consent.

Mr. Dooling — Mr. President, I ask for unanimous consent to reinstate the language of the bill as it was before Mr. Buxbaum's amendment was adopted this afternoon.

Mr. Buxbaum — I object.

The President — Objection is made. The debate must refer to the bill which is before the Convention upon the order of third reading, the bill in relation to the regulation of manufacturing in tenement houses.

The President — Has Mr. Dunlap sent up an amendment to the bill?

Mr. Dunlap — No, I haven't any amendment, but I want to say a word.

Mr. Byrne — I have sent an amendment to the desk.

The President — The Secretary will read Mr. Byrne's amendment.

The Secretary — By Mr. Byrne: On page 1, line 5, strike out the words "or prohibit".

Mr. Dunlap — Judge Dunmore called attention a few moments ago to the conditions prevailing in Johnstown and Gloversville. Now, I do not represent that district, but I am very familiar with the conditions there. It is the great glove center of the country. There are nearly 800 glove shops there, and no large ones, as compared with manufacturing industries everywhere, but the gloves are manufactured in small factories. On the front of the lot very often there is a four family house, that would, under the present tenement house law, be within the provisions of the tenement house laws. In the rear of these houses are these small factories. The people of Gloversville and Johnstown and all around that section, engage very largely in the glove business, and they do it in this way. The gloves are cut out in these factories and are taken to the various houses, where the women sew on them, and use their homes as their factories, that is, they use their sewing machines there, and they do all this work on the gloves there, so that at least nine-tenths of all the work in those cities is done in the house by the women there; and it extends in addition away out in the country in every direction. They take the gloves out there and they do the work in the house. This also applies to the baseball industry. That is a great center for baseballs. They make thousands of dozens of them, and they are sewed in the houses of the people, and if this amendment should prevail, and

if the Legislature should legislate concerning the conditions that exist in New York city, and those are the conditions concerning which these laws are generally passed, it would absolutely prohibit the cities of Gloversville and Johnstown from continuing their business. They have no facilities for doing it in the mills except to a very limited extent. Take, for instance, the largest industry there, the Myers Brothers, the largest factory in this country manufacturing gloves, and yet not one-fifth of their employees are at work in the factories. They do nothing there but cut them out and send them out in all these houses, and at least I am safe in saying that at least one-half of these houses would come within the provisions of the tenement house law. These houses are clean, neat and the people are not extremely poor. They are, many of them are people of well-to-do circumstances. A great many of them own their own houses, and do their work there, and have one, two, three and four girls and a mother working there, doing their business there, all their work there and under very much better sanitary conditions than in any factory. Their homes are as clean as they can be, and to wipe out all the people practically in that vicinity would be wrong, it seems to me, with an amendment of this kind. Surely, we haven't any idea of doing anything of that kind, and yet, would not that be the result? If you pass laws according to the conditions in those cities which need remedying, it would be better, but these laws come every time from the city of New York, from the conditions they investigate and find there, and then they pass a general law which hits these other places. Now, these are not farmers, as a general rule, who are interested here. Of course, the farmers in the surrounding country do work on the gloves. Again, there are many farmers in that section who do depend entirely upon their farms, and who make cheese in a cleanly and satisfactory manner, and yet there are other people who depend absolutely and solely upon their work in the glove factories and it seems to me that is a very dangerous proposition; even assuming that the country members of the Senate and Assembly and the city men are inclined to be entirely fair and careful and prudent, yet if they make laws based upon the conditions as they see them in the city, and as these reports of investigators show, it is going to do a very grave injustice to a lot of industries in these second-class cities.

Mr. Byrne — Will not the amendment which I have just submitted, striking out the words "or prohibit" meet your demand?

Mr. Dunlap — Yes, I was going to say that, but I forgot it. That would help it very much indeed. They have no objection to its being regulated, because there is nothing there to regulate. The conditions are as good as in the average home. But, without that amendment it is vicious and bad, I believe.

Mr. Parsons — I wish to know whether you are in favor of making sure of the constitutionality of the present law which prohibits the manufacture of an article of food, or of dolls, or dolls' clothing or articles of children's or infants' wearing apparel in tenement houses?

Mr. Byrne — I am not in favor of doing any such thing, but neither am I in favor of writing into the Constitution a provision which would permit the prohibiting or rather permit the closing out of little industries such as have just been referred to, and stopping manufacturing of that kind. I am opposed to doing anything of that character. Now, the Jacobs case, I think one of the reasons for that decision was not so much regarding the health or the making of these things. It was that there was a combination which desired to shut out these little manufacturers in these houses and that was the reason for it. To that I am opposed and I think the word "regulate" would cover manufacturing of these things and that it is not necessary to say "prohibit".

Mr. Parsons — Wasn't the word in the Jacobs case the word "prohibit" and is not that the word which we have got to meet?

Mr. Byrne — I think the word was "prohibit", but I don't think the reason for that decision has been understood.

Mr. Heaton — What Mr. Dunlap has just said regarding the glove industry in Gloversville applies with great force to the industry of making collars and cuffs in the city of Troy and in a great many other places about here. I, for this reason, opposed the amendment offered by Mr. Sargent, and if the bill cannot be defeated as a whole, I will approve the amendment which was offered by Mr. Byrne. The work which is done in Troy and in the vicinity of Troy is small piece work, of which you all know, and is done in a very proper manner, and in homes, but it might be possible, if we incorporated this provision in the Constitution and made a definition of a tenement house which Mr. Sargent seeks to incorporate here, that we might prevent a large number of people from doing work in their homes where there are three families, or four families which live under the same roof, and therefore, I am opposed to this amendment by Mr. Sargent.

Mr. Meigs — Believing that the conditions which we are trying to cure are limited practically to the large cities I offer the following amendment.

The President — The Secretary will read the amendment offered by Mr. Meigs.

The Secretary — By Mr. Meigs: On page 1, line 5, after the word "houses" strike out the period and add the words "in cities of the first class".

Mr. Meigs — I move its adoption.

Mr. Mereness — Through the operation of the Direct Primary Law, unfortunately perhaps for Fulton county, it has no representative in the Convention, but as it is in the Senatorial District which I have the honor of representing in part, I wish to add my testimony to what Mr. Dunlap has so often said, and urge, in addition, that there are thousands of families within a distance of as much as twenty miles around Gloversville that are keeping the wolf from the door by making up gloves in their homes. I do not suppose that the Legislature would ever pass a law which would interfere with that, but it seems to me that under the Constitution as it stands now, the Legislature has all the authority it needs to regulate manufacturing in tenement houses in the interest of public health. That is as far as I think it ought to go, and it seems to me this is an entirely unnecessary amendment to insert in the Constitution of the State.

Mr. A. E. Smith — The gentleman says that is as far as we ought to go. Suppose that it could be proven to your entire satisfaction that there is springing up in New York city a system whereby a sweatshop contractor receives a fairly liberal price from a factory for home manufacturing of goods, and he, in turn, is peddling that out in tenement houses to have it done at about one-quarter of what he is charging for it, he performing no labor at all; and in order to earn 60 or 75 cents a day a woman and five or six children are working from five o'clock in the morning until late at night, without any regulation by the State. Don't you think that is a situation that the Legislature ought to be at least in a position to deal with?

Mr. Mereness — The condition suggested by the distinguished leader of the minority in the Assembly of course presents a very strong case, but it seems to me that the real purpose of this measure is a step in the effort to unionize all the labor of the State.

Mr. Barnes — That is all provided for in Article 1, Section 19, of the Constitution.

Mr. A. E. Smith — What is that?

Mr. Barnes — The one that was put in in 1913, the Workmen's Compensation act.

Mr. A. E. Smith — No, I beg your pardon. That applies to employees.

Mr. Barnes — What are these people of whom you speak?

Mr. A. E. Smith — They are not employees; they are a form of contractors. This woman is not employed by any factory. She sublets from the contractor that delivers the stuff around. Besides, the health and welfare and comfort of employees is what the gentleman has reference to. These people are not employees.

Mr. Dick — Whatever may be the conditions which exist in tenement houses in the congested city of New York, I am quite sure that those conditions do not exist in other sections of the State. Therefore I move that this measure be recommitted, with instructions that it be reported forthwith amended by inserting after the word "houses" in line 5 the words "in any city having a population of more than one million".

Mr. Wagner — For the information of the gentleman who just offered this amendment, I would like to read from the report of the State Factory Investigating Commission as follows: "The reports of our investigators show, however, that home work is by no means confined to New York City. They found home workers engaged in rope-splicing and button carding in Auburn; finishing men's clothing in Buffalo; carding buttons in Lockport; carding hooks and eyes in Niagara Falls; making paper boxes and cigars, sewing buttons on shirts, and mending maltsters' bags in Tonawanda", etc., going throughout the State, so that this question that we are dealing with is not confined to New York City, but the condition is all over the State. We found unsanitary conditions quite as bad in some other sections of the State as we did in the city of New York.

Mr. Schurman — Is it a fact that in these other portions of the State these conditions are found in tenement houses?

Mr. Wagner — Yes, these are tenement houses only that we investigated.

Mr. Dooling — Is it not possible by suitable regulations to regulate the conditions under which those goods are manufactured in all of the places that were disclosed to you in your investigation?

Mr. Wagner — We did that by law, and we found it necessary for the protection of the health of the people generally to prohibit entirely the manufacture of certain articles in tenement houses. We passed the law that is now upon the statute books, the laws of 1913. You will find there an absolute prohibition. There may be a question whether we are permitted to do that under the present Constitution. This assumption here is the most extraordinary thing, that we must not empower the Legislature to deal with these conditions, if they should ever exist, because they are surely going to abuse that power and do something against the welfare of the people of the State. That is an extraordinary argument to make in this Constitutional Convention. Just think of the power the Legislature now enjoys in the way of legislation. They may give franchises away, they may do any number of things, and yet we entrust them with that power. There have been no oppressive conditions in regard to labor laws and the protection of the people of the State. That is shown, Mr. President, in the fact that

every case which has gone to the Court of Appeals in recent years involving the question of the exercise of the police power of the State, contested as it was by those who are affected, has been declared to be in compliance with our police power, and it has been held that the legislation was for the welfare of the people of the State. This is an extraordinary situation that here in a Constitutional Convention we are asked to act upon the theory that the Legislature cannot be trusted to properly exercise its functions for the best interests of the people of the State.

Mr. Schurman — Senator Wagner, if the Legislature has had power in the past to legislate in regard to these conditions, what is the need of putting it into the Constitution at all?

Mr. Wagner — Mr. President, the law has not been contested, but there is doubt in the minds of a good many attorneys as to whether the Legislature has power to enact these laws. By the way, this legislation passed by a unanimous vote in both houses of the Legislature, in response to a public demand. In order that a question may not be raised, we want to put it into the Constitution that the Legislature may deal with these questions.

Mr. Betts — You speak about the Legislature being so reliable and so accurate —

Mr. Wagner — It is just as reliable as this Convention.

Mr. Betts — Let me ask the question. Did not the Legislature pass a law imposing personal registration upon all the voters of the State; wasn't it signed by a Democratic Governor and declared unconstitutional by the Court of Appeals?

Mr. Wagner — Yes.

Mr. Betts — Are we to-day in this Constitution providing for that provision which allowed rural voters not to register personally, and thereby condemning the action of that Legislature?

Mr. Wagner — There are a good many things done by the Legislature involving politics, with political motives behind them, which are unjust and unfair and no one has denied it. The very men who legislated that way have practically conceded that it was for the purpose of oppressing the voters in the city of New York, but I will say for legislative bodies that on humanitarian questions they have usually responded to a decent public demand.

Mr. Barnes — I do not wish to detain the Convention on this matter except with reference to one point that Mr. Wagner raised. If you followed him, you must have noticed how he confused legislation with Constitution making. The provision that is proposed to put in here is to take away, to abridge the right which the court declared to be inherent in the Jacobs case. I read yesterday a part of that decision, and I should like to read just a short extract from it now. Speaking of the measure that was passed at that time, it says: "Under it he cannot manufacture

his own tobacco into cigars for his own use or for sale. He will become a criminal for doing that which is perfectly lawful for him to do outside of the two cities named". This particular bill at that time covered New York and Brooklyn. Mr. Meigs' amendment is practically this, that a man has a right to conduct a lawful business in his own home outside of the city of New York, but if he lives in the city of New York where there are two other families in the same house he cannot transact a lawful business of his own. If you are trying to establish that kind of principle in this Constitution I believe you will find that the people of this State are not absolute fools. I do not believe they want the fundamental principle of the right of the individual to live and to conduct a lawful business to be destroyed by this Convention. I think you members here should halt and consider that this is directed against the entire American theory of life, of living, in the interest of what Mr. Wagner calls humanitarianism. It means the destruction of the individual liberty of every citizen of this State. You cannot go on in that line without destroying your entire history, the traditions of your country, and the reason why we are here. I understand Mr. Parsons' mind. It works along that line; mine does not. I do not believe that the Republican people of this State, and possibly the Democratic people, have any such conception of our Constitution as Mr. Wagner advocates, speaking of it as if it were legislation. It is a guarantee to the individual that he may live his life as best he can, without the constant interference of the State in every particular. If you are to have a State, as a State — that is why I asked you to present my amendment to the voters in order that this question might be settled — a State that is all in all, the people of the State have the right so to establish it. If we are to maintain the American theory of living we have got to defeat this amendment, and every amendment that comes into this Convention like it.

Mr. A. E. Smith — The debate to-night will go down in the history of this Convention as proving beyond the shadow of a doubt the wisdom of the remarks of the President of the Convention himself on this floor the other day when he said that it was absolutely necessary to print the debates of the Legislature. Let us get a proper understanding of what we are trying to do here. Let us get rid of this talk about the American spirit and understand what we are trying to get at. The great trouble in this State to meet the present day problem is that we should not have any such language as "liberty" and "preserving property and liberty by due process of law". The word "liberty" in there does not mean what our courts have of latter years construed it to mean. The

gentleman from Albany knows that himself. That word "liberty" means physical liberty, the right to walk around and not be detained in any one place, and they have stretched it around all over the map to make it mean liberty of contract.

Mr. Barnes — Of property?

Mr. A. E. Smith — No, liberty of contract.

Mr. Barnes — I thought it meant property.

Mr. A. E. Smith — Property, too, if it interferes with somebody else.

Mr. Barnes — I ask the gentleman how he is going to walk around —

Mr. A. E. Smith — Not when he is detained. He cannot do it. That is the liberty that it refers to, the right of a man to do as he likes. Why, of course, pocket-picking on the back of a car is not a bad occupation if there wasn't a penalty against it. It is an absurdity to think that the complex problems that we have to meet in big cities, not alone in New York but all the big cities, cannot be met by the legislative bodies here because they find themselves tied up by some language in the Constitution that was never intended to apply to that situation. The gentleman cannot find a bit of fault with the legislation that has been passed that came from the Factory Investigating Commission because the Court of Apeals itself took notice of the pages of sworn testimony, the names of the people and the facts were set forth justifying the conclusions that led to the legislation. There has been a lot of talk about this Factory Investigating Commission, and there has been politics behind the talk. There has crept into the minds of some people a little bit of jealousy of the great work that was done by that Commission for the working people of the State and of the beneficent laws that were written into the statute books as the result of their study and research.

Mr. Barnes — Don't you see, Mr. Smith, that you and I differ? There is no need of debating the politics of this thing. The Constitution is made by this body. It is submitted to the people and the people approve it. It is not made in the dark; it is made in the open. We try to put into the debates exactly the intent, what the purpose is. Then the Legislature comes along and passes a law which you may say reflects public sentiment. We do not know. We do not have a referendum. When that law is passed there is a conflict. In this case the people make the law in the Constitution. That is the situation, but not from your angle. You do not want that done. You would prefer to have the Constitution purely an instrument defining how government shall be conducted. Then, of course, the Legislature would be elected on a different basis. Then there would be no need of the Legislature having all

that power, and it would be a great deal different in that case. We would have to adopt the proposition on an entirely different basis. That is all I mean. You are not quite sure in regard to what the sentiment is until you have gone to the ballot box. Under the legislative action there is no opportunity to get the proposition before the people.

Mr. A. E. Smith — Why shouldn't it be all right if it is put before the people in this way?

Mr. Barnes — It has not been offered separately. I offered my proposal to be voted on separately in 1917.

Mr. A. E. Smith — We are going to vote on that next week. We may vote to submit this separately. No one can tell to-night. That is a week away. This Constitution may be submitted section by section. No one knows what the vote on that is going to be, so that does not enter into the discussion to-night. The only thing that enters into the discussion to-night is whether this Constitutional Convention is willing to let the people of the State of New York say yes or no as to the power the Legislature is to have to deal with these problems. There can be no question as to that system. There is no question as to the evidence, the sworn testimony of competent people, as to the fact that regulations are needed.

Mr. Dunmore — I want to say this in reply to Senator Wagner's statement that the Legislature can be trusted to deal with this subject. We had a situation where the Legislature passed a law that was passed upon by the Court of Appeals in People vs. Ring, 197 New York, 142. That act of the Legislature prohibited anybody from acting as an undertaker who was not a licensed embalmer. The Court of Appeals said that it was not necessary that a person should be a licensed embalmer in order to bury a dead body. That legislation was brought about by the embalmers of the State for the purpose of establishing a monopoly in the undertaking business and the Legislature of this State stood for it. Mr. President, I am not criticising the Legislature. They pass laws without hearing both sides. They perhaps did not know what they ought to have known as to what the origin of that law was. But when it comes to the court and they hear both sides, the court can say whether it is proper legislation or not. The courts of this State have been the great bulwark between oppressive legislation and the poor people and this question should be left to the courts to say whether the Legislature goes too far or not. The Constitution itself should not give to the Legislature power to absolutely prohibit these small enterprises in homes by which poor people are earning a livelihood.

Mr. Parsons — I hope that all the amendments will be defeated.

We are confronted with this situation. In the Jacobs case the Court of Appeals held unconstitutional a law which prohibited manufacturing in tenement houses. Since that day that decision has stood in the way of dealing with this tenement house situation. After 137 factory girls were killed in the Triangle shirt waist factory fire some years ago, a committee of public safety was appointed, of which Mr. Stimson was chairman, and that committee advocated the appointment of a commission by the Legislature to consider the question of factory legislation. As a result of that the Factory Investigating Commission was appointed, and it has given us in this State information as to facts which had existed for years, which we never could have obtained had not that awful tragedy occurred. If we make use of the information given to us by that Factory Investigating Commission, those girls will not have died in vain.

Mr. Marshall — Only this question. Wasn't that a factory and not a tenement house? Is it not such a factory into which you wish to drive the people?

Mr. Parsons — I was talking about the fact that it was not until we had a tragedy that this was done. That is one of the troubles with our system of government. It is not until we have a tragedy that we remedy the abuse. Fortunately, the Commission did not confine itself to factory conditions. It investigated all conditions of manufacturing, and it found there was certain manufacturing in tenement houses which must be prohibited. And so we passed amendments which are now in Section 104 of the Labor Law which prohibits the manufacture of food — prohibit, I say, the manufacture of food, dolls' clothing, children's or infants' wearing apparel in tenement houses. That legislation was passed by the unanimous vote of the Republicans and Democrats in both houses of the Legislature, 46 Senators and 129 Assemblymen. And yet, because of the Jacobs case, there is doubt to-day of the constitutionality of that legislation. This amendment has been introduced so that we can be sure that such legislation can be enacted. All power is subject to abuse. If you will not grant power because it may be abused, you will not grant any power. Let me say to Mr. Dunlap and Judge Heaton, that Gloversville and Troy need have no fear. I served in the Congress of the United States when we passed similar legislation and I know that when such legislation is before legislative bodies, when the people's interest are concerned, they will see that their interests are not unfairly treated. There is no fair ground for the claim that discrimination will be made in situations of this kind. This very investigation which has been had has given us information which will enable the Legislature in acting under

this power to discriminate so that, where it is necessary to prohibit, there will be prohibition, and there will not be prohibition where it is not necessary to prohibit. I hope, Mr. President, that all the amendments offered will be defeated and that the proposition itself will be adopted.

The President — The time has expired for debate. The Chair recognizes Mr. Wagner.

Mr. Wagner — Just briefly, Mr. President, in answer to Judge Dunmore, let me say I did not contend that the Legislature of this State has never passed a law which contravened the provisions of the Constitution. Of course, there have been laws passed which were declared afterwards unconstitutional, but that is the protection against the Legislature — there are our courts, so that those who fear that some legislative body may enact a law which is oppressive, their fear must be minimized by the fact that appeal may be made to the courts, and if anyone has been unjustly or illegally treated he can secure his redress in the courts.

Mr. Dunmore — Can an appeal be taken to the courts from a constitutional act which you are trying to pass by this?

The President — The time for debate has expired. The question will recur upon the first amendment.

Mr. Wagner — Mr. President, whether the delegates of this Convention realize it or not, this is one of the critical moments of this Convention and its record. If the message goes from this chamber that this humanitarian legislation receives no sympathy from this body it will cast a gloom and a suspicion upon the whole work of this Convetnon. And for the sake of the work which has been done here I hope that this amendment will be upheld and the amendments offered to it will be defeated.

The President — The Secretary will read the first motion.

The Secretary — By Mr. Sargent: On line 5, after the word "houses" add "as such houses are now defined by statute".

The President — All in favor of the motion to recommit to the Committee of the Whole with instructions to amend forthwith as read by the Secretary will rise and remain standing until counted. The gentlemen will be seated. All who are opposed will rise. The gentlemen will be seated. The motion is lost. The Secretary will read the second amendment.

The Secretary — By Mr. Byrne: On page 1, line 5, strike out the words "or prohibit".

The President — A rising vote is called for. All in favor of the motion to recommit to the Committee of the Whole with instructions to amend forthwith as read by the Secretary will rise and remain standing until counted. The gentlemen will be seated. The vote is 57 in favor of the amendment and 67 in opposition,

so the motion is lost. The Secretary will read the next amendment.

The Secretary — By Mr. Meigs: On page 1, line 5, after the word "houses" strike out the period and add the words "in cities of the first class".

The President — All in favor of the motion to amend as read will say Aye, those opposed No. The Noes have it, and the motion is lost. The Secretary will read the next amendment.

The Secretary — By Mr. Dick: After the word "houses" in line 5, insert "in every city having a population of more than one million".

The President — All in favor of the motion will say Aye, opposed No. The Noes have it and the motion is lost. The Secretary will read the sections of the bill.

The Secretary — The Delegates of the People of the State of New York in Convention assembled, do propose as follows: Section 1.

The President — The Secretary will call the roll. All in favor of the adoption of the proposed amendment will answer Aye as their names are called; those opposed will answer No.

Those who voted in the affirmative were: Messrs. Adams, Aiken, Allen, F. C., Angell, Baldwin, Bannister, Barrett, Baumes, Bell, Bernstein, Berri, Blauvelt, Brenner, Burkan, Buxbaum, Byrne, Clearwater, Coles, Dahm, Daly, Donnelly, Donovan, Dooling, Dow, Drummond, Dykman, Eisner, Endres, Eppig, Fancher, Fogarty, Foley, Franchot, Frank, Gladding, Green, Griffin, Haffen, Hale, Harawitz, Johnson, Jones, Kirk, Landreth, Latson, Law, Leary, Lincoln, Lindsay, Low, McKinney, Mann, Martin, F., Martin, L. M., Nicoll, C., Nixon, O'Brian, J. L., O'Connor, Ostrander, Parker, Parmenter, Parsons, Pelletreau, Phillips, S. K., Quigg, Rhees, Richards, Rodenbeck, Ryan, Sanders, Sargent, Saxe, J. G., Schoonhut, Schurman, Sears, Sharpe, Sheehan, Slevin, Smith, A. E., Smith, E. N., Smith, R. B., Smith, T. F., Standart, Stimson, Tierney, Unger, Vanderlyn, Wafer, Wagner, Ward, Waterman, Weber, R. E., Wood, Wickersham, Williams, Winslow, Young, F. L., President — 98.

Those who voted in the negative were: Messrs. Austin, Barnes, Bayes, Beach, Betts, Bockes, Bunce, Clinton, Cobb, Cullinan, Dick, Doughty, Dunlap, Dunmore, Fobes, Ford, Greff, Heaton, Hinman, Kirby, Leggett, Lennox, Linde, Marshall, Mathewson, Mealey, Meigs, Mereness, Nicoll, D., Owen, Phillips, J. S., Potter, Reeves, Rosch, Ryder, Steinbrink, Stowell, Tuck, Van Ness, Webber, C. A., Wheeler, Whipple, White, C. J., Wiggins, Wood, Young, C. H.— 46.

When Mr. Doughty's name was called he said: Mr. President, I would like to explain my vote.

I want to be the very last person to hinder a reform and one of the very first to prevent the taking away of a human right. This measure in my opinion is aimed at a human right. It is aimed to destroy the effect of the Jacobs case which has been referred to in the debates, which has declared a certain human right. The contention of the sponsors for this measure is either that, or it is a health measure to prevent the spread of disease from articles manufactured in tenement houses. That situation, to my mind, presents a fallacious argument. It would prevent the cobbler, for instance, from carrying on his trade in a tenement house, while next door another cobbler could carry it on in a house which was not a tenement house. It is impossible to pass a law equitably in these terms. This amendment is not a pruning knife of reform, but a destroying axe striking into a human right. I vote No.

When Mr. Dunmore's name was called he said: Mr. President, for the first time in this Convention I desire to explain my vote.

I am in entire sympathy with any law that may be necessary to prevent manufacturing under conditions which would endanger public health, but this constitutional amendment is absolutely unnecessary. The law defining tenement houses, as I said in the discussion, in the last part of the definition says "And for the purpose of this chapter, a tenement house shall be construed to include any building on the same lot with any such tenement house and which is used for any of the purposes specified in Section 101 of this chapter." Now Section 100 defines those different kinds of business which are carried on in homes so that if the Legislature exercised the power which this amendment will confer upon it it will prevent the carrying on this small business in a separate building, standing on the same lot on which a tenement house stands, it might be a hundred feet away, where the building in which it is carried on would be just as separate from the tenement house as any two houses could be. This amendment will authorize the Legislature to enact a statute which will prevent thousands of honest and industrious men in this State from earning a livelihood in their own homes and firesides under conditions as sanitary and cleanly as exists in any of the factories. It will authorize the Legislature to enact a statute which will drive thousands of working girls out of their own homes, away from home influences either into the street or to the factories. There is no need of this amendment. The police power of the State is ample to pass any laws necessary for the health or welfare of the community. This amendment adds nothing to that power except to

authorize the Legislature to arbitrarily prohibit this home industry. If the Legislature shall pass such a bill, as it certainly will, if you pass this amendment, and thousands of working women and girls are driven from their homes into the streets or into factories where the sanitary conditions are not as good as and the moral influences are much worse than in their homes, the responsibility will rest upon you. This amendment is so vicious and radical that I must enter my most earnest protest against it. I therefore vote No.

When Mr. Green's name was called he said: I ask the indulgence of the Committee of the Whole for just a moment. I had hard work sitting still during this discussion, but I did want to see some work done, and I did not believe it was possible to get ten votes against so reasonable a proposition as this. I think it furnishes an opportunity for Judge Dunmore to talk on his unreasonable reasonable bill, which probably won't get before this body, but if there is one thing we can do to destroy the work of this Convention more than another it is to put the stamp of approval upon those who oppose this measure. I know that there is any quantity of tenement-house factories in this country that are doing a manufacturing business that is an injury to the manufacturers of the country. We have got to meet them in competition. It is farmed out, this work is, in tenement-houses at very low prices. In my own home town of Binghamton they manufacture cigars and they have to meet the competition of the tenement-house made goods. This law as proposed is reasonable and right and just and if we go back on it with our votes here I am sure the people will go back on the Constitution when they have the right to vote.

When Mr. Heaton's name was called he said: I regret very much to be obliged to vote against this bill. If any one of the amendments had been adopted, except the first one, I should have been very glad to have voted for it; for in voting for the measure, properly amended, I would have considered that those women and girls by the thousands who are enabled now to work in their homes and earn a livelihood for themselves, and their brothers and their sisters and children would have been protected. I hope now they will be protected, if this amendment should pass. However, I cannot be sure about it, and I therefore vote No.

When Mr. Ostrander's name was called he said: We have voted to trust almost everybody and fix it so we can't get at them if they do wrong. I am going to vote to trust the Legislature, because it is a body we can get at when we want them.

When Mr. Parmenter's name was called he said: I ask to be excused from voting and to explain my vote. I never appreciated before the significance of the words "Oh, liberty, how many are

the crimes committed in thy name." The liberty that I have heard of to-night is not the liberty that I have in mind. The liberty that gives to the individual, to the cigarmaker, for instance, the privilege to infect half a dozen denizens of his district with a loathsome disease is not my conception of liberty. I believe, sir, in police regulation. I believe in the liberty of the individual to the fullest extent, but I do not believe in the liberty of the individual who can harm his immediate family, who can harm his neighbors and who can harm a whole community. I vote Aye.

When Mr. Quigg's name was called he said: It may be that this is the kind of an amendment that should be submitted separately, although as has been suggested here, although if we don't mean referendum, it seems to me there has been too much talk already, about separate amendments and submitting them separately. Now, I know the referendum idea is strongly advocated. There is a verse that I remember and attributed, I think, to the Honorable Josephus Daniels, the Secretary of the Navy, which may or may not represent the public feeling. However, I will state it. " The people's wrongs they end them, the people's rights, they defend them, each patriot's wish is for the initiative and referendum." But, Mr. President, don't let us get into that dangerous talk about our amendment. This is one that will do this Constitution a great deal of good. It is safe and it is just and I vote Aye.

When Mr. Reeves' name was called he said: I ask to be excused from voting long enough to briefly explain my vote. The definition of liberty that we have heard here to-night from our good friend, Al Smith, shows the absolute misconception of what we are doing, if we pass this proposed amendment. When the Constitution of the United States and the Constitution of the State of New York guarantee that we shall not be deprived of life, liberty or property, without due process of law, you ask, what do they mean, by the word " liberty "? They mean, freedom of speech, freedom of thought, freedom of act, just so long as we do not interfere with our neighbor, or the State, and when we do interfere with our neighbor or the State, the police power will come in and stop that interference. The Jacobs case may be somewhat in the extreme, but this it not the way to cure it. It is absolutely illogical and wrong to pass this kind of an amendment, and then to decry the kind of an amendment which Mr. Dunmore has suggested, that there shall not be any act of the police power that should be unreasonable. Let us stop tampering with the police power. It will take care of these things, and we are not assisting it to take care of these conditions by the passage of any such proposition as this. Mr. President, I vote No.

When Mr. Schurman's name was called he said: Mr. President, I desire to be excused from voting and to explain my vote. I think the Legislature already has the power. We propose in this Constitution to confer greatly increased powers upon the Governor. I should consider it a very serious mistake if at the same time we withdrew from the Legislature any powers which it now possesses, and I deem it unnecessary to restrict the powers of the Legislature except for the safeguarding of fundamental rights. The facts developed this evening seem to me to show that this is a matter for legislative discretion. I vote Aye.

When Mr. C. A. Webber's name was called he said: I desire to be excused from voting and to explain my vote. I believe that morality, contentment and happiness are best promoted by home work. I don't want to drive mothers and daughters into the sweatshops and factories. I believe in regulation, but not in prohibition. I vote No.

When Mr. Wiggins' name was called he said: I ask to be excused from voting and to briefly state my reasons for so doing. I believe the right to engage in a proper occupation in one's home should not to be abridged; that whatever conditions may exist which need regulation and correction, that it is the right of the Legislature to deal with that subject concurrent with the police power of the State, but I do not believe that there is any necessity for the passage of a proposition of this character or that it is right in principle, and, therefore, I vote No.

Ninety-eight votes have been cast in the affirmative, and 46 in the negative. The proposed amendment having received the assent of a majority of all the delegates elected to the Convention, is declared adopted. The Secretary will proceed to read the title of the next order on the calendar.

The Secretary — No. 865, by the Committee on Industrial Interests and Relations, to amend sections 18 and 19 of article 1 of the Constitution, in regard to damages for injuries causing death, laws for the protection of the lives, health or safety of employees, and workmen's compensation for injuries or death, from accidents or occupational diseases.

The President — The bill is before the Convention and is open to debate under the rules.

The President — There being no debate, the Secretary will read the text of the proposed amendment.

The Secretary — The delegates of the people of the State of New York, in Convention assembled, do propose as follows: Section 1. Section 2.

The President — The Secretary will call the roll, and the delegates who desire to vote in the affirmative will answer Aye as their names are called. Those opposed No.

Those who voted in the affirmative were: Messrs. Adams, Aiken, Allen, F. C., Angell, Baldwin, Bannister, Barrett, Baumes, Bayes, Beach, Bell, Bernstein, Berri, Blauvelt, Brenner, Burkan, Buxbaum, Byrne, Clearwater, Clinton, Cobb, Coles, Curran, Dahm, Daly, Devo, Dick, Donnelly, Donovan, Dooling, Doughty, Dow, Drummond, Dunlap, Dunmore, Dykman, Eisner, Endres, Eppig, Fancher, Fobes, Fogarty, Foley, Ford, Franchot, Frank, Gladding, Green, Greff, Griffin, Haffen, Hale, Harawitz, Heaton, Johnson, Jones, Kirk, Landreth, Latson, Law, Leary, Lincoln, Linde, Lindsay, Low, McKinney, Mandeville, Mann, Martin, F., Martin, L. M., Mathewson, Mereness, Nicoll, C., Nicoll, D., Nixon, O'Brian, J. L., O'Brien, M. J., O'Connor, Parmenter, Parsons, Pelletreau, Phillips, J. S., Phillips, S. K., Quigg, Reeves, Rhees, Richards, Rodenbeck, Ryan, Ryder, Sanders, Sargent, Saxe, J. G., Schoonhut, Schurman, Sears, Sharpe, Sheehan, Slevin, Smith, A. E., Smith, R. B., Smith, T. F., Standart, Stimson, Stowell, Tuck, Unger, Vanderlyn, Van Ness, Wafer, Wagner, Ward, Waterman, Webber, C. A., Weber, R. E., Weed, Wheeler, Whipple, White, C. J., Wickersham, Williams, Winslow, Wood, Young, F. L., President — 125.

Those who voted in the negative were: Messrs. Austin, Barnes, Bockes, Bunce, Cullinan, Hinman, Kirby, Leggett, Lennox, Marshall, Mealy, Meigs, Ostrander, Rosch, Steinbrink, Wiggins, Young, C. H.— 17.

Mr. Haffen — Mr. President, was that my name?

The President — The Secretary will suspend the call. The delegates will take their seats. The business will be suspended until the delegates have taken their seats. We cannot go on with the final vote on the adoption of an amendment to the Constitution with such confusion that it is impossible for members to hear their names called.

Mr. Haffen — That is the reason why, Mr. President, I asked if my name had been called, and I would also like to state that there is so much confusion back here that we can not hear what we are voting on.

The President — This is the bill introduced by the Committee on Industrial Interests and Relations and has to do with occupational diseases and so forth.

The Secretary will continue the call of the roll.

The President — One hundred and twenty-five votes cast in the affirmative and 17 in the negative. The proposed amendment having received the assent of a majority of all the members elected to the Convention, the proposed amendment is declared adopted. The Secretary will read the title of the next order on the calendar.

The Secretary — No. 867, by the Committee on Legislative

Organization. To amend sections 1, 2, 3, 4, 5, 7, 8 and 9 of Article III, of the Constitution, and to transfer Section 6 of Article X into Article III.

The President — The bill has been sent back to the order of third reading, and, therefore, will be stricken from the calendar for the evening. The Secretary will read the title of the next order on the calendar.

The Secretary — No. 857, by the Committee on Governor and Other State Officers, repealing Section 5 of Article V, and creating a new section to be properly numbered.

The President — That is the bill relating to the Canal Board. Does any one desire to debate it?

The President — There being no debate the Secretary will read the title of the proposed amendment.

The Secretary — The delegates of the people of the State of New York, in Convention assembled, do propose as follows: Section 1.

The President — The Secretary will call the roll. All in favor of the passage of the bill will answer Aye to the call of their names. Those opposed will answer No.

Those who voted in the affirmative were: Messrs. Adams, Aiken, Allen, F. C., Angell, Austin, Baldwin, Bannister, Barrett, Baumes, Bayes, Beach, Bell, Bernstein, Berri, Blauvelt, Bockes, Brenner, Bunce, Burkan, Buxbaum, Clearwater, Cobb, Coles, Cullinan, Dahm, Daly, Deyo, Dick, Donovan, Dooling, Doughty, Dow, Drummond, Dunlap, Dunmore, Eisner, Endres, Eppig, Fancher, Fobes, Fogarty, Foley, Ford, Franchot, Frank, Green, Greff, Griffin, Haffen, Hale, Harawitz, Heaton, Johnson, Jones, Kirk, Landreth, Latson, Law, Leary, Leggett, Lennox, Lincoln, Linde, Lindsay, Low, McKinney, Mandeville, Mann, Martin, F., Martin, L. M., Marshall, Mathewson, Mealy, Meigs, Mereness, Nicoll, C., Nicoll, D., Nixon, O'Brian, J. L., O'Connor, Ostrander, Parmenter, Parsons, Pelletreau, Phillips, J. S., Quigg, Reeves, Rhees, Rodenbeck, Rosch, Ryan, Ryder, Sanders, Sargent, Saxe, J. G., Schoonhut, Schurman, Sears, Sharpe, Slevin, Smith, A. E., Smith, E. N., Smith, R. B., Standart, Steinbrink, Stimson, Stowell, Tierney, Tuck, Unger, Vanderlyn, Van Ness, Wafer, Wagner, Ward, Waterman, Webber, C. A., Weber, R. E., Weed, Wheeler, Whipple, White, C. J., Wickersham, Williams, Winslow, Wood, Young, C. H., Young, F. L., President — 129.

The President — One hundred and twenty-nine votes have been cast in the affirmative and none in the negative. This proposed amendment having received the assent of a majority of all the delegates elected to the Convention, it is declared adopted. That completes the calendar.

Mr. Wickersham — I send up the following resolution and ask consent for its immediate consideration.

The Secretary — By Mr. Wickersham: Resolved, That when the Convention adjourn to-morrow, Saturday, it shall adjourn until Thursday, September 9th, at 8:00 p. m.

The President — All in favor of the adoption of the resolution will say Aye, contrary No. The resolution is agreed to.

Mr. J. L. O'Brian — I desire to give a written notice of intention to suspend certain rules.

The Secretary — Mr. O'Brian, from the Committee on Rules, gives notice that on Saturday, September 4th, for the purpose of expediting consideration of the business of the Convention, he will move to suspend rule 3, relating to the order of business; rule 36, relating to third reading; rule 50, paragraph 1, relating to the consideration of resolutions, and rule 56, third sentence, relating to reports of the Committee on Rules.

The President — The Chair will call attention to the fact that it will be necessary to give full effect to the motion which has just been adopted by the House, Mr. Wickersham's motion, to adopt a resolution instructing the Committee on Revision and Engrossment to proceed to the performance of their duties under rule 67.

Mr. Wickersham — Mr. President, I make that motion.

The President — All in favor of the motion will say Aye, contrary No. The motion is agreed to.

Mr. A. E. Smith — I desire to submit the following notice.

The Secretary — Mr. A. E. Smith gives notice, under rule 56, that, at some future time, he will move to suspend rules Nos. 3, 16, 20, 21, 22, 24, 25, 27, 32, 34, 35, 36 and 37, for the purpose of advancing out of the regular order to third reading and adoption proposals Nos. 417, 765 and 791, general orders Nos. 36, 55 and 56, respectively.

Mr. J. L. O'Brian — I desire to add to the notice which I gave, rule 35, relating to proposed amendments. I will send it to the desk in a moment.

Mr. Wickersham — Mr. President, I understand Mr. A. E. Smith has some motion he would like to make.

Mr. A. E. Smith — At some future time.

Mr. Wickersham — Mr. President, I move we adjourn.

The President — It is moved that the Convention do now adjourn. All in favor will say Aye, contrary No. The motion is agreed to and the Convention stands adjourned until ten o'clock to-morrow morning.

Whereupon, at 11:35 p. m. the Convention adjourned to meet Saturday morning, September 4, 1915, at 10 o'clock.

SATURDAY, SEPTEMBER 4, 1915

The President — The Convention will please be in order. Prayer will be offered by the Rev. Francis A. Kelley.

The Rev. Mr. Kelley — In the name of the Father, and of the Son, and of the Holy Ghost, Amen. Oh, God, humbly, prayerfully, we beg of Thee to grant to this august body Thy divine gifts of wisdom and of knowledge. Banish from their hearts all guile and teach them to say with hearts humble and meek, Our Father, Who art in Heaven, hallowed be Thy name, Thy kingdom come, Thy will be done, on earth as it is in Heaven; Give us this day our daily bread and forgive us our trespasses as we forgive those that trespass against us. Lead us not into temptation but deliver us from evil, Amen.

In the name of the Father and of the Son and of the Holy Ghost. Amen.

The President — Are there any amendments to be proposed to the Journal as printed and distributed? There being no corrections, the Journal stands approved as printed.

Mr. Wickersham — Mr. President, I suggest the absence of a quorum, and ask that the roll be called.

Upon the call of the roll the following delegates responded: Messrs. Adams, Aiken, Angell, Austin, Baldwin, Bannister, Barrett, Baumes, Bayes, Beach, Bell, Bernstein, Berri, Betts, Blauvelt, Brackett, Brenner, Bunce, Burkan, Byrne, Clearwater, Clinton, Cobb, Coles, Curran, Dahm, Daly, Dennis, Deyo, Dick, Donnelly, Dooling, Doughty, Dow, Drummond, Dunlap, Dunmore, Dykman, Eisner, Endres, Eppig, Fancher, Fobes, Fogarty, Foley, Ford, Franchot, Frank, Gladding, Greff, Griffin, Haffen, Harawitz, Heaton, Johnson, Jones, Kirby, Landreth, Latson, Law, Leary, Leggett, Lennox, Lincoln, Linde, Lindsay, Low, McKean, McKinney, Mandeville, Marshall, Martin, F., Martin, L. M., Matheson, Meigs, Mereness, Nicoll, C., Nicoll, D., Nixon, Nye, O'Brian, J. L., O'Brien, M. J., O'Connor, Olcott, Ostrander, Owen, Parker, Parmenter, Parsons, Pelletreau, Phillips, J. S., Quigg, Reeves, Rhees, Richards, Rodenbeck, Rosch, Ryder, Sanders, Sargent, Saxe, J. G., Saxe, M., Schurman, Sears, Sharpe, Sheehan, Shipman, Slevin, Smith, E. N., Smith, R. B., Standart, Steinbrink, Stimson, Stowell, Tierney, Tuck, Unger, Van Ness, Wafer, Wagner, Ward, Webber, C. A., Weber, R. E., Weed, Westwood, White, C. J., Wickersham, Williams, Winslow, Wood, Young, C. H., President.

The President — One hundred and twenty-eight delegates having answered to their names, a quorum of the Convention is present. Presentation of memorials and petitions. Communications

from the Governor and other State officers. Notices, motions and resolutions. The Secretary will call the roll of districts.

Mr. M. Saxe — I ask unanimous consent to make a statement. Mr. President, I desire to make a statement with reference to the tax article which has been adopted by this Convention. My attention has been called to frequent statements in the press that the tax article is to be submitted separately "because it is feared that the farmers will oppose the provision which would permit the State Tax Commission, instead of the local assessors, to value the personal property on the farms, like cattle and agricultural implements." While it is true that the tax article confers plenary power upon the Legislature to deal with the subject of taxation, it is an absolutely unwarranted conclusion to allege that this means that State assessors will supersede the local assessors in the assessment of personal property. My opinion is that the statement is simply made to throw dust in the eyes of the farmer who will, after all, be the most benefited class, because the burden on his real estate will be considerably lightened by a fair and just tax on personal property. Under the proposed article, the Legislature will have to classify the subjects of taxation, and under an intelligent classification there will be no more necessity for imposing a tax upon agricultural implements than upon kitchen utensils. Low rate taxes on those classes of personal property most able to bear a tax will produce a surprising revenue for localities. Let me call your attention to one illustration of what a classified personal property tax means in this State. The total assessment of personal property in this State is now, approximately, $425,000,000. Under the present tax law, bank stock, independently of the general property tax, is assessed at a flat rate of one per cent. and the total assessment of bank stock for the year 1914 was, approximately, $426,000,000, evidencing the fact that here is one class of property alone, which must be conceded to be but a mere fraction of the total personal property in the State, showing an assessed value of, approximately, $61,000,000 greater than all the other personal property in the State, excepting mortgages and secured debts.

The President — Does Mr. Saxe wish this noted under the head of notices, motions or resolutions?

Mr. M. Saxe — I asked unanimous consent to make a statement. There was no objection. I wanted to get it in the Record so that it could be properly circulated among the farmers of the State.

Mr. Olcott — Mr. President — of the 18th District, the same as Mr. Saxe. I now desire to bring up my motion that the Committee on Rules find some place in to-day's special order calendar for the Proposed Amendment for preference to the veterans of the Spanish War. My natural feelings of diffidence about asking for

the floor of this Convention must, you may well be sure, be very much increased by this eleventh hour motion, so impossible as it seems off-hand in the request that it makes. But the reason that I am constrained to make it is for the same reason that always "thrice is he armed who hath his quarrel just," especially where he has not himself been guilty of anything unjust to cause a quarrel. In other words, I have been guilty and the Spanish War veterans speaking through me, have been guilty of no laches in the premises. The proposition I refer to was introduced by me on April 25th and was numbered 29 in the vast array of propositions which encumber our document books. Public hearings were given almost immediately, Mr. President, and at those public hearings, with considerable expense on the part of these men who could ill afford an expense foisted upon them with no purpose, a great many people attended and the cause represented in the proposition was elaborated and arguments made for it. That cause, by the way, I will only define so that those of you who are listening may know, will be the same preference to the Spanish War veterans which has been for a long time accorded by the Constitution to the Civil War veterans.

Mr. Griffin — Mr. President, I rise to a point of order. My point of order is this, that there is so much confusion in the Chamber that I cannot hear a word Judge Olcott is saying.

The President — The point of order is well taken, and the Chair asks the delegates to refrain from audible conversation and confusing motion.

Mr. Olcott — Those hearings, as I have said, were well attended and were concluded early — I have not looked at the record to find the date, but it was some months ago, and is not short in weeks from the time when the earlier one of our propositions was introduced by me. From that time to this, without risking the appearance of undue persistence, Chairman Rhees, I have made inquiry, sometimes directly through my own members, more often through members of the Committee, as to when the report, adverse or otherwise, or an announcement that there would be any report, would be made on this subject, because I was anxious to progress it and I was told early, that is, weeks ago and I think months ago, that instead of the Committee laying this matter aside so that it would then be proper for me to move to discharge the Committee from further consideration of it, I was told that the Committee was going to make a report on it, an adverse report, that there would be a minority report, and from that good news — I mean that there should be any report, and not that the thing should be put to sleep without any other opportunity than making the rather obnoxious motion to discharge the

Committee — upon that good news I waited and waited and made inquiries, and the last thing that I have heard was that there seemed a necessity for the filing of this report, waiting upon the action of the Convention upon the Public Officers' report. Well, that necessity, if I may be pardoned for saying so, on its merits seemed to me to be rather forced than real and still I waited patiently with the result that only on August 31st was the report filed. That was last Tuesday. Now I see Mr. O'Brian, the distinguished chairman of the Committee on Rules, laughing at this fine method of putting Bill Olcott to sleep and I begin to appreciate its fineness. I don't mean that the Committee on Rules up to this time had anything to do with it; I am not referring to Mr. O'Brian in that fashion, but it did cultivate repose in me which I now regret.

Mr. Chairman, we have not wasted any time since last Tuesday advertently on this subject, because, I think, on Wednesday Senator Griffin gave notice that he would make some motion in the matter, and that kept me from moving, because his motion would, I thought, have accomplished what I wanted, and it was only on Thursday that I learned that his motion was not the proper procedure in this rather complicated situation, and I had, up to that time, supposed it was, and, nay more, I still suppose so, with all due respect to the Chair, and then it was that I had to give notice of this motion this morning. So that we have not lost a moment that we could have helped. Now, gentlemen, I have made a rather involved statement for the purpose of analyzing the situation, showing that this measure, this demanded measure, was produced at the earliest possible moment, was progressed by its proponent at the earliest possible moment. They have not let sleep their endeavors to remind you of it, because with a hyperbole which has been almost tiresome — I mean the hyperbole in numbers and not in anything they said — with an exaggeration of numbers which has been almost tiresome, but on their part properly insistent, they have had memorials produced from this district and that district, calling the attention of the Convention to it, and I can only conclude that somewhere and somehow and by somebody there has been an intention not to let us have a vote on this matter on this floor. Whether the intention has been there, because it is not for me, after all, to read intention — whether the intention has really been there or not, the fact has been that either by intention or by dreadful laches, the Committee on Civil Service has robbed this great and heroic band of people in this State, whether their demands be right or not their heroism during war times is in no doubt — has robbed these people of the opportunity of getting a vote in this Convention, unless this

motion shall be granted, and I do appeal for the granting of this motion. I say that if the Committee be instructed to give us time to-day, we will submit to fifteen minutes, if necessary we will submit to almost no time, if only you will give us a vote on this proposition on the floor, and relieve this Convention of the suspicion, which I entertain, right or wrong, and which is certainly entertained by the very large number of interested persons in this matter that have been purposely put to sleep, and that there has been an intention of not giving them a vote on this floor. I want my last word on the subject to be that I speak for people, who, I think, are entitled to very great consideration. I spoke a few days ago of the heroes of peace. Now I speak of the heroes of war. They have asked in my proposition, perhaps, for too much, but at least you should let them have a preference when they get on the list with as high a standing as need be, and the Civil Service Commission can always make that high enough to insure —

Mr. Wickersham — Mr. President, I rise to a point of order, if you will excuse me, Judge Olcott.

The President — The gentleman will please state his point of order.

Mr. Wickersham — My point of order is that debate as to the merits of the measure is not in order on this motion.

The President — The Chair holds that the point of order is well taken.

Mr. Olcott — Mr. President, I think so myself, to such an extent that I apologize for having done it. I tried to keep clear of it. Then, let my last word be this, because I have grown old enough to know that sometimes things are not what they seem, though they seem so very strong. I honor every member of the Committee on Civil Service, and I don't want it to be understood that I dare to say that they had an intention of keeping a vote from this floor. If I am wrong about it I want to apologize in advance. If I am right about it, I know that the motives were the highest, but still I ask this Convention to give us a vote on the subject, and then overwhelm us if it so desires, but not let the people throughout the State have a suspicion that they were denied that vote.

Mr. Griffin — Just a word on the subject, and I speak with considerable diffidence, because I happened to be one of that great army of volunteers who yielded loyalty to our flag during the Spanish-American War, and permit me to say that I do not expect to profit personally anything by this, and I do not think that of the 15,000 Spanish-American War volunteers who are living to-day, that are living in this State to-day, there are any great

number of them in the Civil Service. There are less than a thousand of them who will profit in any way, directly or indirectly, by any one of the bills which this motion brings up. Now, Mr. President, this Convention has been flooded with literature emanating from civil service doctrinaires.

Mr. Rhees — I rise to a point of order.

The President — The gentleman will please state his point of order.

Mr. Rhees — I raise the point of order that this is not the time to debate the merits of this question.

The President — The point of order is well taken.

Mr. Rhees — And I would like to second Mr. Olcott's motion that the Committee be instructed to report the measure in question.

Mr. Griffin — Mr. President, I make a point of order.

The President — Mr. Griffin will please state his point of order.

Mr. Griffin — I make a point of order that when a gentleman rises on one subject and is recognized, he cannot take advantage of his recognition to make another motion.

The President — That point of order is well taken. Mr. Griffin has the floor, and the observation of the Chairman of the Committee on Civil Service must be regarded not as a motion, but as an expression of his willingness to be fair. Mr. Griffin may proceed.

Mr. Griffin — Mr. President, I do not intend to go into the merits of the bill, but I believe that we have listened to so much eloquence in this Convention on other matters of clearly less importance, that this proposition might give you an opportunity to show a little indulgence in a matter which has taken up but very little time of this Convention. The motion, Mr. President, which is made here this morning, brings up not only Mr. Olcott's bill, but it brings up nineteen other bills, all bearing on preferences in the civil service, and remember that the majority report of the Civil Service Committee includes each one of those bills, for they are mentioned in the majority report. Mr. President, I desire to say this, that the motion of Judge Olcott does not apply alone to his particular amendment. There are amendments which would confine the preference to war veterans only in the matter of appointment, Judge Weed's, for instance, to the matter of appointment, and eliminating the preference or the demand for a preference in promotion and retention, so that if Judge Olcott's motion prevails, which I hope it will, there may be an opportunity of making an accommodation here that will be satisfactory to all of those interested in these matters. Mr. Choate, in excusing the putting of the preference clause in the Constitution of 1894,

said that there were special reasons for the granting of preference to veterans of the Civil War. Yes, Mr. President, I admit that there were special reasons in 1894 for giving preference —

Mr. Wickersham — Mr. President, I rise to a point of order.

The President — The delegate will state his point of order.

Mr. Wickersham — The point of order is that the merits of the measure are not subject to debate.

The President — The point of order is well taken.

Mr. Griffin — I am trying to keep pretty close to the proposition —

The President — I appreciate that it is difficult for the delegate to confine himself to a statement, but there are many measures pending for consideration, and the Chair feels that justice to the other members of the Convention requires at this time that the rule of order to which attention has been called against debate of the merits of the question shall be enforced.

Mr. Griffin — Mr. President, I did not hear the remarks of the Chair.

The President — The Chair reminded the delegate that justice to the other members of the Convention interested in other matters of our calendar requires that the rule of order against the debate of the merits of the measure, upon the motion at this time, shall be enforced.

Mr. Griffin — I will comply with the President's suggestion and second the motion of Judge Olcott.

Mr. Byrne — Just one word, gentlemen: I sincerely hope that this motion will prevail and if you do not care to give any preference to the Spanish War Veterans at least give us a vote on the floor of this Convention.

The President — Under the direction of rule 56, this motion must be referred to the Committee on Rules. The Committee on Rules is notified to meet in the President's room immediately after the Convention goes into general orders. The clerk will continue the call.

Mr. Clearwater — I offer the following resolution and ask that it be sent to the special committee appointed by the Chair to consider these matters.

The Secretary — By Mr. Clearwater: Resolved, That Proposed Constitutional Amendment introduced by the Committee on Taxation, including Nos. 696, 756, 806, 812, 824, being Int. No. 679, and hereto annexed, be separately submitted to the people.

The President — The resolution will be referred to the special committee appointed to consider such matters. The Secretary will continue the call.

Mr. J. S. Phillips — I offer the following resolution and ask for its immediate consideration.

The Secretary — By Mr. J. S. Phillips: Resolved, That the clerks of the standing committees of the Convention be and they hereby are directed on or before the day of final adjournment to deliver to the clerk of the Committee on Library and Information all committee books and records, and the Committee on Library and Information is instructed to provide for the permanent deposit of the same in the State Library. That the Superintendent of Documents be and he hereby is directed, on or before the expiration of the period of thirty days from the date of final adjournment, to deliver to the Director of the State Library for deposit in the State Library, all copies of the Record, Journals, Proposed Amendments, documents and other papers pertaining to the Convention remaining in his possession.

The President — Is there objection to present consideration of the resolution? The Chair hears none. All in favor of the resolution will say Aye, contrary No. The resolution is agreed to. The Chair wishes to say that the clerk of the Committee on Library and Information will be directed to certify to the officers of the Convention whether or not the clerks of the respective committees have complied with the order of the Convention regarding the delivery of documents and papers which have been laid before their committees and the clerk of the Committee on Library and Information and the officers of the Convention will not consider themselves at liberty to make the final certificate for the payment of the clerks of the several committees until it has been certified that they have performed that duty. The records of this Convention should, for the benefit of future Conventions and future Legislatures, be preserved in accordance with the order of the Convention already made.

Mr. Rodenbeck — I offer the following resolution and ask its reference to the Committee on Printing.

The Secretary — By Mr. Rodenbeck: Resolved, That the Committee on Revision and Engrossment be authorized to cause to be correctly printed and suitably bound a final draft of the Present State Constitution with all amendments thereto, properly inserted, adopted by the Convention, for authentication and deposit as the Convention may provide, and report the same to the Convention upon reconvening; and that not exceeding 300 additional copies be printed and suitably bound, one copy for distribution to each of the members of the Convention, and the remaining copies for distribution to libraries and as the President of the Convention may direct.

The President — Referred to the Committee on Printing.

Mr. J. L. O'Brian — Pursuant to the notice which I gave last evening, in behalf of the Committee on Rules, I now move to suspend the third sentence of Rule 56. That rule provides that it will be in order at any time to call up a report from the Committee on Rules. The third sentence reads that any member may object to its consideration until the next legislative day and if sustained by 24 other members consideration shall be so postponed, but only once. For obvious reasons, this being the last day for the general consideration of business, I move the suspension of that sentence of the rule so that the majority of the House may be in control of the business.

The President — All in favor of the motion will say Aye, contrary No. The resolution is agreed to. The call will continue.

Mr. Westwood — I desire to state that I was unavoidably called from the Chamber last night before the vote on two or three bills and, had I been present, on Proposal No. 860, relating to the inspection and grading of food products, I would have voted in the affirmative; on print No. 864, in relation to manufacturing in tenement houses, I would have voted in the affirmative; on 865, in relation to occupational diseases, I would have voted in the affirmative.

The President — Reports of standing committees.

Mr. Rodenbeck — The Committee on Revision and Engrossment presents a report on two amendments.

The Secretary — Mr. Rodenbeck from the Committee on Revision and Engrossment, to which was referred Proposed Amendment No. 868, Int. No. 702, reports the same as examined, found correct and properly engrossed.

The President — All in favor of agreeing to the report will say Aye, contrary No. The report is agreed to.

The Secretary — Mr. Rodenbeck from the Committee on Revision and Engrossment, to which was referred Proposed Constitutional Amendment introduced by the Committee on Legislative Organization, No. 869, Int. No. 722, reports the same as examined, found correct and properly engrossed.

The President — All in favor of agreeing to the report will say Aye, contrary No. The report is agreed to. Reports of select committees. Third reading. The Secretary will read the title of the next order on the third reading calendar.

The Secretary — No. 868, by the Committee on Governor and Other State Officers: To amend Sections 1 and 4, Article IV, of the Constitution.

The President — The bill is in Convention and open for debate. This is the bill which relates to the salary of the Governor. Is there debate?

The President — There being no debate, the debate is declared closed. The Secretary will read the text.

The Secretary — The Delegates of the People of the State of New York, in Convention assembled, do propose as follows: Section 1. Section 2.

The President — The Secretary will call the roll. All in favor of the Proposed Amendment will answer Aye as their names are called, and all opposed will answer No.

Those who voted in the affirmative were: Messrs. Adams, Alder, Angell, Averill, Baldwin, Bannister, Barrett, Baumes, Bayes, Beach, Bell, Bernstein, Berri, Betts, Blauvelt, Bockes, Bowers, Brehm, Brabazon, Byrne, Clearwater, Clinton, Coles, Corwin, Cullen, Daly, Dennis, Deyo, Dick, Donnelly, Donovan, Dooling, Doughty, Dow, Drummond, Dunlap, Dunmore, Dykman, Epping, Fancher, Fiske, Fogarty, Foley, Ford, Franchot, Frank, Gabriels, Green, Groff, Griffin, Haffen, Hale, Harawitz, Heaton, Johnson, Jones, Kirby, Kirk, Laudreth, Latson, Law, Lent, Leggett, Lennon, Lincoln, Linde, Lindsay, Low, McKean, McKinney, Mandeville, Marshall, Martin, F., Martin, L. M., Mathewson, Meigs, Nicoll, D., Nixon, Nye, O'Brian, J. L., O'Brian, M. J., O'Connor, Olcott, Owen, Parker, Parmenter, Parsons, Pellegrini, Phillips, J. S., Quigg, Reeves, Rhees, Rodenbeck, Rosch, Ryan, Ryder, Sanders, Sargent, Saxe, J. G., Schoonhoven, Schurman, Scott, Sharpe, Sheehan, Shipman, Slevin, Smith, A. E., Smith, F. N., Smith, R. E., Standart, Steinbrink, Stimson, Stowell, Tanner, Unger, Van Ness, Wafer, Wagner, Ward, Waterman, Webber, C. A., Weber, R. E., Weed, Westwood, Wheeler, Whipple, White, C. J., Wickersham, Wiggins, Williams, Winslow, Wood, Young, C. H., President—134.

Those who voted in the negative were: Messrs. Barnes, Brackett, Bunce, Endres, Ostrander—5.

The President — The Secretary announces that the vote is 134 in the affirmative, and 5 in the negative. This proposed amendment having received the affirmative vote of a majority of the delegates elected to the Convention, is adopted. The Secretary will read the title of the next order.

The Secretary — Third reading No. 34, print No. 867-869 being the Committee on Legislative Organization, to amend sections one, two, three, four, five, seven, eight, nine of Article 3 of the Constitution.

The President — The time for debate on this measure having expired, the Secretary will read the text.

The Secretary — The Delegates of the People of the State of New York, in Convention assembled, do propose as follows: Section 1. Section 2. Section 3. Section 4.

The President — The Secretary will call the roll. Those delegates who are in favor of this proposed amendment will signify by saying Aye as their names are called. Those opposed No.

Those who voted in the affirmative were: Messrs. Adams, Aiken, Angell, Austin, Bannister, Barnes, Barrett, Baumes, Bayes, Beach, Bell, Berri, Betts, Bockes, Brenner, Buxbaum, Clearwater, Clinton, Cobb, Coles, Cullinan, Curran, Dennis, Deyo, Dick, Doughty, Dow, Dunlap, Dunmore, Fancher, Fobes, Ford, Franchot, Gladding, Green, Greff, Haffen, Hale, Heaton, Hinman, Johnson, Jones, Kirby, Landreth, Latson, Law, Leggett, Lennox, Lincoln, Linde, Lindsay, Low, McKean, McKinney, Mandeville, Marshall, Martin, L. M., Mathewson, Meigs, Mereness, Nicoll, C., Nixon, Nye, O'Brian, J. L., Olcott, Parker, Parmenter, Parsons, Pelletreau, Phillips, J. S., Quigg, Reeves, Rhees, Rodenbeck, Rosch, Ryder, Sanders, Sargent, Saxe, M., Schurman, Sears, Sharpe, Smith, E. N., Standart, Steinbrink, Stimson, Tierney, Tuck, Vanderlyn, Van Ness, Waterman, Weber, R. E., Westwood, Wheeler, Whipple, White, C. J., Wickersham, Wiggins, Williams, Winslow, Wood, Young, C. H., President — 103.

Those who voted in the negative were: Messrs: Baldwin, Bernstein, Blauvelt, Bunce, Burkan, Byrne, Dahm, Daly, Donnelly, Donovan, Dooling, Drummond, Dykman, Endres, Eppig, Fogarty, Foley, Frank, Griffin, Harawitz, Kirk, Leary, Mann, Martin, F., Nicoll, D., O'Brien, M. J., O'Connor, Ostrander, Potter, Richards, Ryan, Saxe, J. G., Sheehan, Shipman, Slevin, Smith, A. E., Stowell, Unger, Wafer, Wagner, Ward, Webber, C. A., Weed, —43.

When Mr. Griffin's name was called, he said: Mr. President, I beg to be excused from voting long enough to express my reasons. Aside from the mere matter of apportionment, I could not support this measure for one reason: Section 7, on page 17, which was provided in the old Constitution and prohibited any member of the Legislature from receiving civil appointments during his legislative term, has been completely excised from this Proposed Amendment, giving the Governor unwarranted powers. You are now giving him further power to corrupt the Legislature by the promise of reward. He can now make promises to Senators and Assemblymen, give them commissionerships, provided they vote for his measure. That prohibition should remain in the Constitution. Section 8 is partly restored, and partly eliminated. If adopted in this Convention, a peculiar situation arises that a mayor of a city or a member of Congress may go to the Legislature, either to the Assembly or the Senate, and may be permitted his seat. I don't think the people are going to approve any such thing.

When Mr. J. G. Saxe's name was called he said: Mr. President, I don't believe that it is necessary for any resident of New York city to explain his reasons for voting against this measure. Up to this day, I have had nothing to say on the question of apportionment; but I concur with everything that has been said here by the minority members about the gerrymander of the Senate and the gerrymander of the Assembly. I also want to add that I heartily concur with what the gentleman from Bronx, Mr. Griffin, has said in respect to striking out Section 7, prohibiting the appointment of members of the Legislature to office during their terms of office. The effect of striking out this section is to bring a new pressure upon the Governor and to permit and invite deals and dickers with the Governor for his legislation and otherwise. As a Democrat, I oppose the double gerrymander. As a lawyer, who has seen service in the Legislature, I oppose the striking out of Section 7. I vote No.

When Mr. Sheehan's name was called he said: Mr. President, I desire to be excused from voting, and briefly to explain my reasons. In the noise and confusion which surrounded the discussion of this question yesterday, there was slipped into this proposal, on page 15, at the suggestion of the gentleman from Kings, Mr. Buxbaum, a most astonishing propositnon. Care has been exercised that if an apportionment is possible at all under this proposal it can only be made when the Republican party is in control of the Senate. The proposition submitted by Mr. Buxbaum is this, and I ask my Democratic friends particularly to see what it means — that as the board of aldermen in the city of New York are to be elected this year, and as, of course, they are to be elected by borough districts, an Assembly apportionment is to be made not by the common council, but by the aldermen from each borough. Under the present Constitution the apportionment would be made by the common council. Knowing that at the coming election the chances are that the city of New York will go Democratic, and that the majority of the common council will be Democratic next year, my friends of the majority insert a provision that when they come to apportion the Assembly districts the Board of Aldermen elected in the county of Kings shall meet separately; and while the same rule is applied to Democratic Manhattan, The Bronx, Queens and Richmond, the object of it all is to change the rule in order that a partisan advantage may be gained in the Borough of Brooklyn. I wonder if the men in this Convention, who, after all, are trying to bury partisanship as far as they can decently, appreciate the depth and the degradation of the partisanship involved in that proposition. I vote no.

When Mr. Wagner's name was called he said: Mr. President,

I ask to be excused from voting and briefly state my reasons. By some mistake, no doubt, some of our metropolitan papers have carried a story that the present provision in the Constitution on apportionment that is in the bill, on which we are now voting, is the result of a compromise, and even leading some to believe that that compromise was entered into by the Democratic members of this Convention; and in order that that doubt or mistake may be cleared up, I desire to say on behalf, as I am authorized, of the Democratic members of this Convention, that we are not, and never were, and never will be a party to any compromise on this question. It is a principle which we have combated from the time this Convention opened until the present time. I simply made a statement yesterday, in answer to a question by Mr. Ray B. Smith, that, between the two injustices, the one proposed by the Committee in its report was more unjust than the one now before us; but both of them are an injustice against the citizens of the city of New York, and I think they will resent the actions of the Republican members of this Convention, who, by voting in favor of this, vote in favor and in approval of the discrimination against the very citizens whom they are alleged to represent in this body. As to the proposal which was put in the bill yesterday, it is a vicious exhibition of partisanship, as bad, if not worse, than the proposal to discriminate against the citizens. Upon the Home Rule bill, which we had before us, we were told that we were going to treat New York as one entity, and the Board of Aldermen shall have all the legislative powers of the entire municipality. We did not discriminate between the counties nor distribute the powers differently to different counties of the city, and yet here, Kings county Republicans, in order that they may satisfy their selfish desires against, perhaps, the will of the majority of the people of the city of New York, and without any debate, practically inject this unjust and unfair proposition into this. How, under those circumstances, can anyone say that the true representatives of the people of New York can enter into any compromise upon this question, or vote in favor of this bill? I withdraw my request and ask to be recorded in the negative.

When Mr. Barnes' name was called he said: Mr. President, I should like to be excused from voting in order to make an explanation, which it seems to me should go upon the Record. Mr. Sheehan has referred to the fact that the common council of the city under the Constitution of 1894 makes reapportionment of Assembly districts in the city of New York. It should be remembered that when the Constitution of 1894 was adopted the city had not been consolidated, and therefore the common council of Manhattan in New York county and the common council in Kings

county made those apportionments. This proposal follows exactly in line with the Constitution of 1894 in this regard, that the members of the Board of Aldermen in each of the counties of the city, acting as a board of supervisors, shall act in the same capacity as boards of supervisors all over the State which make the reapportionment of the Assembly districts. I withdraw my request to be excused and vote Aye.

Mr. Brackett — Mr. President, I did not vote when my name was called on the roll call. I did not expect to vote. I declined to vote deliberately because I did not want to vote. I wanted to pass it over as quietly and as decently as I could, but, inasmuch as there is another call, I want to say this. The delegate from New York can talk what he pleases about unjust provisions that are in the present bill as to the city of New York. I want to say, representing another part of the State than that from which the delegate comes, that the great Republican party, with more than forty majority in this Convention, sent here by people — the delegates of the great Republican party, sent here by people that expected the Convention would do something to continue the forces of good government, by helping the Republican party, have deliberately surrendered their opportunity here and passed the State over to the control of New York city and Tammany Hall. Don't let us have any misunderstanding about it. Sent here for the very purpose, among other things, of doing good to the people of the State by preventing the Greater City from controlling the State, sent here for the purpose of doing whatever it properly could to maintain continuous Republican supremacy and thereby good government in the State, the influences that control this Convention have deliberately declined a provision which would have protected the Republican party in the State and good government in the State, and have permitted a provision to remain in here which inside of the next three or four years will give the Democrats of the State and Tammany Hall the control of the Legislature of the State through the control of the State. Don't think, gentlemen, brethren of Tammany Hall, that you are deceiving the great Republican party of the State when you stand up here and go through the masquerade of saying that you are greatly imposed upon by this provision. You know that if the provision that was reported was not stricken out you would be against this instrument that is going to be submitted to the people, and you know you got that concession as a result of your threats and now you are going down to the city and support a thing that will be for the infinite value of Tammany Hall. I ask to be excused from voting.

When Mr. R. B. Smith's name was called he said: For the

reasons so well stated by Senator Brackett, I also ask to be excused from voting.

The President — The question remains for the Convention to determine whether Mr. Brackett or Mr. R. B. Smith shall be excused from voting. All in favor of excusing Mr. Brackett will say Aye, contrary No. The Ayes have it, and Mr. Brackett is excused. All in favor of excusing Mr. R. B. Smith from voting will say Aye, contrary No. The Ayes have it and Mr. R. B. Smith is excused from voting. The Secretary will announce the result of the vote.

The Secretary — Ayes 103, Noes 43.

The President — A majority of all the delegates elected to this Convention having given their consent to this Proposed Amendment, the amendment is adopted.

Mr. Wickersham — I move that the order of third reading be now suspended until after the midday recess.

The President — All in favor will say Aye, contrary No. The Ayes have it, and on the motion of Mr. Wickersham the Convention will go into the Committee of the Whole.

Mr. Curran — May I be excused for about an hour from the session?

The President — All in favor of excusing Mr. Curran for a short time during this session will say Aye, contrary No. The excuse is granted. The Convention will go into the Committee of the Whole for the consideration of the calendar for Special Orders. Will Mr. Delancey Nicoll take the Chair?

(Mr. Nicoll takes the Chair.)

Mr. Wickersham — I offer the following amendment to the section under consideration.

The Chairman — Mr. Wickersham presents an amendment to Section 5. The Clerk will read the amendment.

The Secretary — By Mr. Wickersham: Page 2, line 7, after the word "or" insert the words "as now prescribed by law". Strike out the words "domestic servants" in line 7.

Mr. Wickersham — Mr. Chairman, I understand that that is acceptable to the Chairman.

Mr. Marshall — That is accepted by the Committee.

Mr. Leggett — I offer the following amendment.

Mr. Wickersham — I move that the first portion of Section 9, the amendment referring to capital punishment, be voted on first, before the second portion. That has been so fully debated, that I move we proceed to vote on the adoption of the amendment in Section 5, relating to capital punishment, and that is on lines 1 to 4 on page 2.

The Chairman — Are there any objections to the motion of Mr.

Wickersham that we now vote on the remaining amendments to Section 5, on page 2.

Mr. Schurman — Mr. Chairman, I would like to call Mr. Wickersham's attention to the fact that the three words, or two words and part of another are on page 2.

Mr. Wickersham — That is true. I refer to the provision beginning on line 10, page 1, the italics, and running to the end of line 4, and ending with the word "established". That is where it refers to capital punishment, and I suggest and move that we vote on that portion of the section.

The Chairman — The Clerk will read the amendments.

The Secretary — By Mr. Harawitz, on page 1, line 10, strike out the words "on a conviction" and on page 2, strike out lines 1, 2, 3 and line 4 up to and including the word "established".

Mr. Gladding — Mr. Chairman, I offered an amendment, the same as the one now before the Convention, and I withdraw mine.

The Chairman — Mr. Gladding withdraws his amendment. All in favor of the amendment offered by Mr. Wickersham will signify their assent by saying Aye.

Mr. Wickersham — Mr. Chairman, the amendment was that offered by Mr. Harawitz, striking out that provision. My motion was to consider his amendment, the first one in order, it being to strike out that provision.

Mr. Barnes — Mr. Chairman, a rising vote.

The Chairman — All in favor of the amendment offered by Mr. Harawitz will signify their assent by saying Aye, contrary-minded No. The Chair is in doubt. All in favor of the amendment offered by Mr. Harawitz will please rise and remain standing until counted. The gentlemen will be seated. All those who are opposed will please rise and remain standing until counted. The amendment offered by Mr. Harawitz is carried. The Clerk will read the next amendment.

The Secretary — The next amendment by Mr. Reeves is identical with the one just adopted.

Mr. Reeves — Mr. Chairman, that is the same as the one adopted, and I ask leave to withdraw it.

The Chairman — If there is no objection, the amendment will be withdrawn. The Secretary will read the next one.

The Secretary — Amendment by Mr. Unger: Line 10, page 1, strike out the words in italics, strike out the same words already stricken out by the amendment adopted, and add the words "no crime shall hereafter be punishable by death, and in case of the imposition of the punishment by life imprisonment"—

Mr. Wickersham — Mr. Chairman, is not that an amendment which falls with the preceding one?

Mr. Unger — My amendment would make the section read that the death penalty is abolished, and in case of life imprisonment there shan't be any pardon or commutation unless the innocence of the person be established. So it brings up clearly and squarely the question of the abolishment of the death penalty without this hybrid proposition which has just been voted upon.

The Chairman — The Secretary will read the amendment as offered by Mr. Unger again.

The Secretary — This portion of the section as proposed to be amended by Mr. Unger would read: "No crime shall hereafter be punished by the death penalty, and in case of the imposition of the punishment by life imprisonment no pardon or commutation shall be granted unless the innocence of the person convicted be established."

The Chairman — Are there any remarks? If not, all in favor of the amendment offered by Mr. Unger will signify it by saying Aye, contrary-minded No. The Chair is in doubt. All those in favor will please rise and remain standing until counted. The gentlemen will please be seated. All those opposed will please rise and remain standing until counted. The amendment is lost. The Secretary will read the next amendment.

The Secretary — By Mr. Betts: Page 5, after the last line, insert the following: Section 4, Article I of the Constitution is hereby amended by inserting therein a new section to be appropriately numbered, to be submitted separate to the people at the same time with the proposed new Constitution, which section shall read as follows: "On a conviction for murder in the first degree the penalty shall be life imprisonment and no pardon or commutation shall be permitted unless the innocence of the person convicted be established. The provisions of this section shall be controlling, other provisions of this Constitution to the contrary nothwithstanding."

The Chairman — All in favor of the amendment of Mr. Betts will please rise. The gentlemen will be seated. All those opposed will please rise. The gentlemen will be seated. The amendment is lost. The Secretary will read the next amendment.

The Secretary — By Mr. Dahm, after striking out the matter already stricken out of the amendment adopted, insert in lieu thereof the following: "Capital punishment is forever abolished".

Mr. Wickersham — Mr. Chairman, is not that involved in the defeat of the other measure?

The Chairman — It seems to me to be an equivalent.

Mr. Unger — The other contained a provision that no commutation should be permitted —

The Chairman — All in favor will please rise. The gentlemen will be seated. All opposed will please rise. The gentlemen will be seated. The amendment is lost. The Secretary will read the next amendment.

The Secretary — By Mr. Baldwin: Applied to the section already stricken out, therefore a defect.

Mr. Baldwin — I withdraw that amendment.

The Chairman — No objection, withdrawn.

The Secretary — By Mr. Winslow: Same as the amendment already adopted.

Mr. Winslow — That is withdrawn.

The Chairman — No objection, the amendment is withdrawn.

Mr. Brackett — I did not know that Czar Reed was going to recognize me. May I offer an amendment to the capital punishment provision —

The Chairman — The gentleman will speak a little louder.

Mr. Brackett — I move to amend the provisions with respect to the punishment for death, that when a criminal is convicted by a jury on authority of the judge, the sentence must be carried out by the judge and jury personally and if not convicted —

Mr. Wickersham — Point of order; there is no such amendment before the House.

The Chairman — That amendment cannot be received except with unanimous consent.

The Chairman — The Secretary will read the next amendment.

The Secretary — By Mr. Brenner: On page 2, between lines 7 and 8, insert "but this shall not be construed to forbid the issuance of a writ or order in the nature of a writ of *ne exeat*".

Mr. Brenner — If it is the desire of this Convention to abolish imprisonment for debt I am sure it would be wise to retain the right to make possible that the non-resident and the contemplated absconding resident be required to give security so that they can be required to comply with any mandate which might be issued to enforce a final judgment against them. I have submitted the amendment to Mr. Marshall, who takes exception to the language of the proposed amendment, and I offer this substitute.

The Chairman — The Secretary will read the substitute.

The Secretary — By Mr. Brenner: Page 2, between lines 7 and 8, insert "but this shall not prohibit the issuance of *ne exeat*".

Mr. Steinbrink — I have offered an amendment, the effect of which is almost the same as Judge Brenner's. Just briefly I want to direct attention to this fact: Unless you adopt the amendment offered by Judge Brenner, there is a class of cases to which irreparable harm will come, namely, the class of cases which are

dealt with by order of arrest before judgment in matrimonial actions. There are any number of cases where women and children will be left destitute unless it is possible to obtain in a separation or divorce action the order of arrest which requires bail, not for imprisonment purposes, but for the purpose of meeting judgment when finally rendered. While I favor abolishing imprisonment for debt in all kinds of action, I think, in the interest of that class of cases, the amendment of Judge Brenner should be adopted.

Mr. Wickersham — The writ of *ne exeat* was abolished in the last Constitution. It is a writ which always operated harshly against the poor and those who were unable to furnish security. It means in effect an order of arrest. It is of no consequence against people who can get bail. It is a great hardship against those who cannot. It falls precisely within the evils which have led to suggesting here the abolishing of imprisonment for debt. I sincerely hope the amendment will not be adopted.

Mr. Wiggins — In view of the fact that no one had an opportunity to hear this amendment read until it was taken up in this order, I desire to offer an amendment to the amendment offered by Judge Brenner, by striking out the period and adding the words " this shall apply to the borough of Brooklyn only ".

Mr. Clearwater — I sincerely trust that the writ of *ne exeat,* which was abolished by the Constitution of 1846 after being severely condemned by the Court of Chancery, will not be restored in this State. The hour is too late, pressure is too great to undertake to recite to the delegates of this Convention the abuses which the writ of *ne exeat* resulted in, but it certainly ought not to be restored by this Convention.

Mr. Stimson — I merely wish to say that the objections which have been brought up by this amendment, the difficulties which have been pointed out by Mr. Steinbrink, seem to me to point out most clearly the evil of putting into the Constitution a provision of this sort at all, a provision like that contained in lines 5, 6 and 7 of this amendment. I think the entire subject-matter of the provisions contained in those lines is matter fitted for a code of civil procedure and not for the Constitution of this State, and I hope the entire provision will be stricken out.

Mr. Wickersham — I sincerely hope that Mr. Stimson's suggestion will not prevail. I think it is very important that this should go in. The Legislature has not acted upon suggestions to repeal imprisonment for debt. This subject was carefully considered in both the Committee on the Bill of Rights and the Committee on the Judiciary. I think it was the almost unanimous opinion of the Judiciary Committee that this provision should be

adopted. I am surprised that my friend, Mr. Stimson, should express the view which he now offers. I am quite sure he has not had an opportunity to thoroughly consider the reasons and the considerations which were advanced to our Committee. What I want to point out — I am not speaking now to the question of *ne exeat* but to the principle of abolishing imprisonment in civil actions. A great volume of testimony produced before the Committee on Judiciary and Committee on Bill of Rights has shown it to be a great evil and to have resulted in great oppression, which ought to be ended in this State.

Mr. Brackett — Supplementing what was said by the delegate from Brooklyn, Mr. Steinbrink, and supplementing it very seriously, I want to call the attention of the members to what is proposed here. It is proposed that any arrest prior to a judgment shall be abolished. A party is going through the State in an automobile and by gross negligence kills a child. The person entitled to the right of action, if he can secure an order of arrest in this State, can hold the person here under bail and can recover. If he cannot do that, he will be compelled to go to the jurisdiction where he can find the party and there litigate, which means that he is denied, in ninety-nine cases out of a hundred, any right or any remedy whatever. I want to say that outside of the city of New York — I do not assume to speak for that in all of its wickedness because we have heard so much of conditions there that we must admit there is a deal of wickedness — I want to say that outside of the city of New York, there is no abuse of mean process either in matrimonial actions or in actions for tort. I recall what Judge Gladding said in the Committee on Judiciary. There will be scores and scores of women and children that will be left absolutely without any support if they cannot have the provisional remedy of arrest prior to the trial of the action, prior to judgment. There are scores and scores and hundreds of additional cases besides matrimonial actions from which you are taking away all the good by the passage of this amendment.

Mr. Marshall — Senator Brackett overlooks the fact that those cases are dealt with here by preserving the right of imprisonment for contempt of court. I don't suppose that he is very anxious to maintain the right of imprisonment in breach of promise cases, and I don't think we have reached a time when we must have some reform in our procedure. The State Bar Association has, year after year, pointed out the evils of imprisonment for debt. The Association of New York has pointed it out in a pamphlet of great ability written by Mr. A. S. Gilbert, its counsel. Mr. Stetson and other gentlemen who have given the subject some consideration have indicated the harshness of imprisonment for debt,

and Mr. Justice Hughes, as I indicated yesterday, in a very able article which he read before the State Bar Association in 1905, which was the beginning of this movement for changing the existing law with regard to imprisonment for debt, shows how unwise and how unjust and how wrong it is to permit imprisonment for debt. In most cases, especially such as have been indicated by Senator Brackett, where a man, by criminal negligence, injures another by means of an automobile, the Criminal law steps in, and in such a case, where the Criminal Law can be effective, that remedy should be pursued and not the civil remedy. We excepted from the rule, however, a group of cases which has been in the Constitution of other States. When we adopt such a provision as this we will be in line with the rule which has been inserted in the Constitution of a majority of the States of the Union.

Mr. Steinbrink — Mr. Marshall, will you explain to the Convention what good it is going to do to imprison as for a contempt in a matrimonial action, after the husband has gone from the State and left behind him a wife and children starving?

Mr. Marshall — Under the laws of this State it is a crime for a husband to desert his wife, and under that law the husbands have been brought into this State and punished, and I was instrumental in having that law passed.

Mr. Stimson — I only wish to say, in answer to what my friend, Mr. Wickersham, and Mr. Marshall said, that this amendment which I have just sent up to the desk is not offered in the haste or heat of the moment; that I did hear the argument which has been alluded to; I am familiar with the reports that have been made; I listened to Mr. Stetson in his argument, and I have been only confirmed in my impression that this is a matter which should be treated by the Legislature and which can be treated by the Legislature, and which there is no reason for putting into the Constitution. And the very fact that the Legislature has been slow in doing it offers no reason for taking this short cut, but it offers every reason for believing there are difficulties in the situation which may not have been presented in full debate to this body, and which offer all the more reason why we should not act hastily on it here.

Mr. Leggett — There is an amendment at the desk to strike out this whole sentence, and I want to say that the reason why the Legislature has been slow to deal with this question — I have been familiar with the discussions of this general matter that occurred in the State Bar Association. I want to say now that so far as the up-state is concerned it is not in favor of doing away with arrest in civil actions, and that is the reason why the Legislature has not taken any action. I want to say further, in emphasizing

and repeating what Mr. Stimson said that this is a matter which should be dealt with deliberately. The Legislature has entire power to deal with it, and we should not take up in haste under the pressure of the closing hours of this Convention a matter purely legislative. I want to add, further, that this changes the rule as to the classes of action, as to imprisonment on final process, and I want to ask the gentlemen of this Convention how many of them have gone through with this carefully enough to know how it changes that rule.

Mr. Dooling — Do you not think the amendment suggested by Mr. Steinbrink is made more necessary now than before, by reason of the recent enactment of the widow's pension law?

Mr. Leggett — I have not given the subject any thought. I cannot answer.

Mr. Clearwater — As chairman of the Law Reform Committee of the State Bar Association, for fourteen years, and as the present President of the association, I ought to be somewhat informed as to the sentiment of the up-state members of that association upon this question, and the association unanimously, at its last annual meeting, recommended precisely such an amendment to the Constitution as the Committee on Bill of Rights has incorporated in this Proposed Amendment. There was no dissent from that by the State Bar Association at a very largely-attended meeting. What I objected to here was the inclusion in the Constitution of the restoration of the writ of *ne exeat*, a very different matter from that expressed in this amendment. This amendment, and I differ with very much hesitation and diffidence from my friend, Mr. Stimson, seems to me entirely a proper one to be embodied in the organic law and it should be retained precisely as reported by the Committee on Bill of Rights and without expansion or limitation.

The Chairman — The question is on the amendment proposed by Mr. Brenner. Will the Secretary please read it.

The Secretary — By Mr. Brenner: On page 2, between lines 7 and 8, insert "but this shall not prohibit the issuance of *ne exeat*".

The Chairman — All in favor of the amendment proposed by Mr. Brenner will signify their consent by saying Aye. Those opposed will say No. The amendment is lost. The next question arises upon the amendment proposed by Mr. Cullinan. The Secretary will read.

The Secretary — By Mr. Cullinan: Page 2, line 6, after the word "penalty" insert "in proceedings instituted by the people of the State".

Mr. Cullinan — That is withdrawn, Mr. Chairman.

The Chairman — The amendment is withdrawn. The next question arises upon the amendment proposed by Mr. Eisner. The Secretary will read.

Mr. Eisner — Mr. Chairman, I understand that will be covered by an amendment of Mr. Wickersham's, and so I withdraw it.

The Chairman — The amendment is withdrawn. The next question arises upon the amendment of Mr. Steinbrink.

Mr. Steinbrink — Mr. Chairman, I understand that is the same as the one offered by Mr. Stimson, and if I am correct in that, I withdraw my amendment in the interest of unanimity.

The Chairman — The amendment is withdrawn. The question arises on the amendment by Mr. Wickersham. The Secretary will read.

The Secretary — By Mr. Wickersham: Page 2, line 7, insert, after the word "or", the words "as now prescribed by law". Strike out the words "domestic servants'" in line 7.

Mr. Marshall — That amendment is accepted by the committee, and would then make the section read: "Imprisonment in civil action is forbidden except for contempt of court on final judgments, for a penalty, for fraud, for willful injury to person or property or as now prescribed by law for wages".

The Chairman — That amendment being accepted, all in favor will say Aye, opposed No. Carried. The next question arises upon the amendment proposed by Mr. Stimson. The Secretary will read.

The Secretary — By Mr. Stimson: Strike out the italics after the period in line 4, down to and including the period in line 7.

The Chairman — All in favor of the amendment proposed by Mr. Stimson will please rise. The delegates will be seated. All those opposed will please rise. The delegates will be seated. The amendment is carried, 69 to 50.

Mr. Marshall — Mr. Chairman, I now move the next section.

Mr. Wickersham — I offer the following amendment.

The Chairman — The Chair would state that under the rule the discussion upon this whole subject of the Bill of Rights terminates at five minutes after 12 o'clock.

Mr. Wickersham — Mr. Chairman, I move the Committee do now rise, report progress and ask leave to continue its session until 1 o'clock under the limitation of the five minute rule.

The Chairman — All in favor of the motion will say Aye, those opposed No. Carried. (The President takes the Chair.)

The President — The Convention will come to order.

Mr. D. Nicoll — The Convention has had under discussion the proposed amendment on the Bill of Rights, and desires to report

progress, and begs leave to extend the time for discussion until 1 o'clock, speeches to be for five minutes.

The President — The question is upon granting the Committee of the Whole leave to sit again on the Bill of Rights report, and extending the time for consideration until 1 o'clock, speeches to be limited to five minutes. All in favor of granting the leave upon the conditions will say Aye, contrary No. The leave is granted.

Mr. Nicoll will be good enough to resume the Chair, and the Convention will go back into the Committee of the Whole. (Mr. D. Nicoll resumes the Chair.)

Mr. Marshall — I now move the adoption of Section 6 as proposed.

Mr. Wickersham — I sent to the desk an amendment.

The Chairman — It occurs to the Chair that Section 5 has not been finally disposed of.

Mr. Marshall — That can be disposed of, I think, when we are all through, because there are no amendments now proposed to it. It will leave the language of the old Constitution. It is not necessary for us to re-enact that.

Mr. Wickersham — While we are passing, I move we adopt that section.

The Chairman — Section 5?

Mr. Wickersham — Yes. It leaves it unchanged.

The Chairman — You have heard the motion. All in favor of the adoption of Section 5 will please say Aye, opposed No. Carried. We will now proceed to Section 6.

Mr. F. Martin — Section 6, if carried, will make a reform in the criminal practice which has been much desired for a great number of years in this State. It has been approved throughout the entire State. At the present time, if a man should be arrested in some of the counties, say in January, it will be March or April before his case can be brought before a grand jury, and in the county of New York, and all the counties of the Greater City, this reform will work a great benefit to those who are arrested for felonies. In the first place, when a man is brought before a magistrate, under the practice as it exists at present, if the magistrate holds him, even though he wishes to plead guilty, it will be necessary to put his case before the grand jury and that causes a great delay. If this amendment should be adopted, upon consent of the party arrested, where the case had been heard by a magistrate, his case could be immediately taken before a judge of one of the higher courts, and there disposed of. It could all be carried out in a few days, instead of compelling the party arrested to lie in jail for weeks or months at a time, and in cases as I have shown you up the State, the party arrested often has to lie in jail three or four months, and in sev-

eral counties even five months before the case can be put before the grand jury. This section will avoid that great hardship to those arrested. For instance, the party arrested may be innocent, and if innocent, his case may not be heard before the grand jury, probably for two or three months, and then the grand jury may dismiss the case and turn the man out who was arrested. This section will avoid all that hardship. The case can go directly before a judge, and in New York county especially, it will avoid the necessity of putting over a thousand cases a year before the grand jury, and will work a much needed reform in the criminal law. I know this section has been approved by every one who has come before the Bill of Rights Committee, and every one whom I have met who had anything to do with the administration of the criminal law. Therefore, gentlemen, I ask you to give this section your earnest consideration and adopt it, so that this much needed reform which has been sought for years may at last be carried out.

Mr. Winslow — Mr. Chairman, I have offered an amendment to this section which I think is in the hands of the Clerk. On page 2, line 19, after the word "imprisonment" insert the words "or in case of an indictable misdemeanor". I am in favor of the amendment submitted by the committee. I believe it would work a much-needed reform in procedure, but in suburban districts it does not accomplish the purpose unless the words I have used in my amendment were inserted. Outside of some of the cities which by their charter give the local courts of special sessions jurisdiction over misdemeanor, the local police magistrates in the towns and villages have no jurisdiction over misdemeanor, except some of those of the less important kind and they must of necessity go before the grand jury. For illustration, in cities, in towns, and in villages, in the violation of the so-called Sullivan law the local magistrate may not try a person charged with carrying concealed weapons. At the present time a first offender who carries a loaded revolver is guilty of a misdemeanor. The local magistrate in such a case would be obliged to hold him for indictment by a grand jury. That is an illustration. Many persons would be held in jail or on bail to await such an indictment. It seems to me that with the amendment suggested in the case of indictable misdemeanor being tried without indictment in the manner suggested, by waiver, that a very great reform would be accomplished. I direct your attention to the language of line 16 in which it is provided, "Any person may, however, in the manner prescribed by law"; in other words if it be thought that the rights of the individual may not be properly safeguarded and then in the excitement and nervousness of an arrest, a person accused of a felony punishable by less than five years' imprisonment, that

he may in his nervousness and excitement be importuned to plead guilty, the language to which I have called your attention will indicate that the Legislature may safeguard the rights and the interest of the person accused of crime, so that such a result will be accomplished with expedition, and the saving of time and money will result by the proposed amendment. I trust the amendment suggested by the committee with the words interpolated by my amendment will prevail.

Mr. Marshall — Mr. Chairman, the Committee is in favor of the amendment proposed to Section 6.

Mr. Burkan — Mr. Chairman, I have sent to the desk an amendment which will amend Section 6, line 21, after the word "trial" by adding "trial of an action or proceeding". My idea is that a person who is committed in lunacy proceedings or proceedings to commit to a reformatory, that those persons so committed should have the right not only to appear, but also the right to appeal. It seems to me that leaving it "in any trial court whatever" should further be extended to apply to a court of action. It would not take in the trial of proceedings of the kind prescribed. Take the case of condemnation proceedings or proceedings for final accounting: It seems to me we ought to extend the right of one appeal, not only to the trial of action, but also to the trial of proceedings — to make it sure that persons committed in lunacy proceedings or in the case of proceedings to commit to a reformatory, and the other proceedings I have referred to, should be granted at least the right of one appeal. That is the purpose of my amendment.

Mr. Wickersham — I have sent up an amendment to strike out the words in italics, lines 23 and 24, "And shall have the right to at least one appeal". The Committee is willing to accept that amendment. It is one of those dangerous propositions, dangerous in that form, unknown in its effect, and as we have in the jurisdiction article provided a method of appeal I think it very undesirable to have it there.

The Chairman — Without objection that amendment will be accepted.

Mr. Harawitz — Mr. Chairman, I hope that the motion just made by Mr. Wickersham will not prevail. I introduced this amendment, and the Committee on Bill of Rights, after hearing, as I understand it, gave it careful consideration. Now, this amendment is designed for this purpose. In the criminal courts of the city of New York, as some of you gentlemen from up-State may not know this, the magistrate, the police magistrate, has the great power of sentencing a man for the term of even a year under some of the sections of the Criminal Code, and a female for the term of three years, upon ordinary hearings which probably last

two minutes, and yet that unfortunate man or woman, as thus sentenced, in the court, the Police Magistrates' Courts, has not got the right to appeal. In a Municipal Court, when a judgment of one dollar is rendered against a man, he has the right to appeal, not only to the Appellate Term, but, if there is a dissent, even to the Appellate Division, and here a property right of one dollar under our system of jurisprudence is given precedence to a man's liberty. I have discussed this subject with nearly every judge of the Court of General Sessions, and Judge Rosalsky has told me that if it was necessary he would send me a letter of approval approving this provision which I have introduced. I have spoken to District Attorney Perkins of the county of New York and he strongly advocates this proposition. District Attorney Martin of the Bronx, who, I understand, is a member of the Committee on the Bill of Rights, not only voted in favor of it in the Committee, but advocated it on the floor. Now, let me give you an instance of what happened only three months ago. As the law stands now, a person convicted by one of these city magistrates has first to ask, or has first the right of appeal to the Court of General Sessions, and in Part 1 of that court the business is so great that oftentimes the judge will deny it as a matter of course, without even examining into the question as to whether the appeal has merit or not, and from that point on that defendant's rights have forever been barred. Now, I had a case a few months ago where I made a motion for leave to appeal, where an unfortunate woman was sentenced for three years, and in the course of the argument the presiding judge said to me, after the District Attorney had opposed it, "I don't think there is merit to this question. This court is very busy, and I am going to deny your motion." I said to the presiding judge, "Will your Honor give me leave to submit a memorandum on the question of law that I raised?" And after consideration he said, "All right," and in an offhand way, "you can submit your memorandum." I submitted my memorandum and two days thereafter that judge, who offhand was ready to deny that woman the right to appeal, granted my motion to appeal, and after a long hearing and argument on that motion, and the points of law that I raised, and after that judge had held up his decision for six or eight weeks, he finally decided the appeal in favor of the appellant, and not only granted that woman a new trial, but completely discharged her, and that appeal is now — I can refer to it. It has been printed recently in the Law Journal, only a few weeks ago, the name of the case is the People against Lizzie Molling, reported in the Law Journal, I think, two or three weeks ago, about, by Judge Wadhams of New York. Now, gentlemen, it seems to me under these circumstances, if that judge had

not reconsidered his determination and granted this woman the appeal, that same woman would now be languishing in jail for a period of three years. What harm can there be by inserting this fundamental principle in our law? What harm can there come to anybody when we, in organizing this Constitution, set down in our fundamental bill of rights this just proposition, by saying that the defendant in criminal cases shall have the right to at least one appeal. Now, gentlemen, as I said before, this section meets with the unanimous approval of every judge in the Court of General Sessions, with the District Attorney of the county of New York, and I trust that the gentlemen will vote to retain this provision in the Constitution.

Mr. Stowell — Do I understand your statement to be that in the application of the criminal law in the city of New York, in certain courts there is no appeal by the defendant in case of conviction without the consent of the court?

Mr. Harawitz — Yes, sir, there is no appeal, and that has been decided by Judge Rosalsky in a lengthy opinion. I cannot refer to it just now.

Mr. Stowell — Let me say a word, in the form of a question perhaps. That is so strange to us, people up the country who are familiar with the criminal law up there that I was not aware before I came here that the right of appeal was denied any one when convicted in a criminal court. It is so contrary to all my sense of justice that I hope the provision which will permit an appeal by any defendant, in case of a conviction will remain in the Constitution.

Mr. Harawitz — In answer to the delegate who just spoke, I want to say that by our procedure you must first on motion ask leave to appeal. You haven't the right of appeal as a matter of right, but you must ask leave to appeal; whereas, in civil cases ina municipal court, as I have said before, if a judgment of one dollar is rendered against a man, he has that right of appeal.

Mr. Stowell — Mr. Chairman, we have no such law up in the country and I hope that the same right will be given to defendants in the city of New York that we have up State.

Mr. Olcott — Judge Stowell's sensibilities were properly aroused in this matter. The Bill of Rights Committee did nothing so strong as to insert this provision for the absolute right to an appeal in the fundamental law of the State. The objection that is made around and behind me by thoughtless sentences that this might be legislated is true, but almost everything in the Bill of Rights might be legislated. What the Bill of Rights is for is to grant to those people who cannot get legislation enacted equal right and just rights in law.

Mr. Wickersham — If that consideration prevails with this body it would not have voted down the provision to abolish imprisonment for debt in civil actions. Is it not a fact that the right of appeal in all kinds of cases, civil and criminal, may be dealt with by the Legislature, which has ample power over the subject and which would have ample power to supply any deficiencies in the right of appeal now existing in criminal cases?

Mr. Olcott — Unquestionably, but they haven't done so. Year after year they have left it undone, and it is to write directly in the Bill of Rights that there shall be a right of appeal.

Mr. Wickersham — Cannot the same statement be made with equal force concerning the unwillingness of the Legislature in the past to abolish imprisonment in civil actions?

Mr. Olcott — Of course. I voted in the Bill of Rights Committee and on this floor for the abolishment of imprisonment for debt. Unfortunately, I voted in the minority. This is vastly more important. The idea of a criminal sentence made by a magistrate of the ilk that some of them unfortunately are, not being subject to any appeal — why you can go up as a suppliant for one of those poor devils to the Court of General Sessions and ask to be permitted to appeal and the Court of General Sessions can deny it. I say this thing, involving the right of liberty, in the case of a male for one year and of a female for possibly three years, in case of conviction, not to have the right to appeal to a judge of a court of record is beyond thought and would hardly be believed. Judge Stowell said it was hardly credible, and he had to be assured that it was really true. Now put it in there. I was a member of the Bill of Rights Committee and listened with astonishment to Mr. Marshall when he rose in his seat and said the Committee was willing to agree with Mr. Wickersham. Of course Mr. Marshall did it inadvertently. The Committee is not ready to agree with him and the Committee says that this thing must be voted in favor of the eternal principle of the Bill of Rights, to have a conviction subject to an appeal to a proper court, a court of record, a court composed of higher individuals than our generally political police magistrates' courts are composed of.

Mr. Wickersham — Is it not so, Judge Olcott, that this provision with which we are dealing is not limited to criminal cases at all? It is a general broad statement and, following the reference to civil action, it provides: "In any trial in any court whatever the party accused shall be allowed to appear and defend in person and with counsel as in civil actions, and shall have the right to at least one appeal".

Mr. Olcott — The party accused. The question answers itself —"as in civil actions".

Mr. Wickersham — You interpret this, do you, Judge Olcott, to refer entirely to criminal proceedings?

Mr. Olcott — Of course.

Mr. Wickersham — That is your interpretation?

Mr. Olcott — I say that that is my interpretation, not, of course, that it is the fact.

Mr. Wickersham — That narrows the supbject to the particular matter of which Judge Olcott has been speaking. It seems to me it has no place in the Bill of Rights whatever, but is a thing for the Legislature.

Mr. Stowell — May I ask a question of General Wickersham? How do you interpret the word "accused" in the clause which refers to civil parties? How do you interpret that?

Mr. Wickersham — Judge Stowell, this is my difficulty: The sentence begins "In any trial in any court whatever"; that is not limited to criminal courts. I have some question as to whether this might not apply to disbarment proceedings.

Mr. Stowell — Mr. Chairman, I think it follows the words "the party accused".

Mr. Wickersham — A party accused might be a lawyer in disbarment proceedings.

Mr. Stowell — That is not assumed.

Mr. Wickersham — We are talking about the language.

Mr. Unger — General Wickersham, what objection is there to giving a man in disbarment proceedings a right to appeal?

Mr. Wickersham — If you had been here, Mr. Unger, a few days ago, you would have heard the debate upon that subject very fully expressed and you would not have to ask me that question.

Mr. Unger — Mr. Wickersham, is it not a fact that disbarment proceedings are practically instigated and begun by the justices of the Appellate Division before whom they come, who are the jury and the prosecutor in the proceeding?

Mr. Wickersham — Then your idea is that this provision would apply to disbarment proceedings?

Mr. Unger — No, I do not say that, but I do not see why there should not be such a thing as an appeal in disbarment proceedings.

Mr. Wickersham — As I read it, it might be so construed.

Mr. Weed — I merely wish to say, as a member of the Bill of Rights Committee, that I heartily approve of the provision that is proposed, and I hope that this right of appeal will be given. It evidently applies only to criminal proceedings and it is one of those rights that should be secured to every individual. Every individual should have the right to one appeal in the case of any criminal prosecution. I hope it will prevail.

Mr. Harawitz — In order to clear the situation as to what

must have been in the minds of the Committee on Bill of Rights, I want to read to the delegates present the original bill, as I first introduced it, which must have been contemplated by the Committee on Bill of Rights when they inserted it in this article: "A person convicted of any crime or any offense of a criminal nature may appeal as a matter of right from the judgment of that conviction or equivalent determination." It seems to me that the Committee on Bill of Rights could have understood that to mean but one thing when they inserted that, and that is that it applied to criminal convictions only.

Mr. F. Martin — Because I am a District Attorney, some people might imagine that I would be against an appeal in a case like this. It is unbelievable that magistrates in the city of New York should have the right, after a hearing of only two or three minutes, to send a woman away for three years without the right of appeal. One of the judges of the higher court told me that it was a rare thing to allow an appeal from a magistrate's court. It is hardly believable that there should be no appeal from the magistrates' courts, and I think if the gentlemen here could understand it, there would not be one vote in this Convention against an appeal. There is an appeal from the higher courts and no right of appeal from the magistrates' courts. I think it should be the unanimous vote of this Convention that there should be at least one appeal.

Mr. Steinbrink — I do not believe in this Convention there is a man who would deny to a defendant in a criminal trial the right to one appeal. Whether or not this word "trial" would include special proceedings or not is a serious question, and I do not think that we should pass this in this form, with the doubt in it that has been expressed by the question put by Mr. Unger. Before the Judiciary Committee the question was thoroughly discussed whether or not in disbarment proceedings there should be the right of appeal, and I believe we decided against it, almost, if not quite unanimously on the theory that a man is admitted by the Appellate Division, and the Appellate Division should have the right to strike his name from the roll for misconduct. Now, if the general use of the word "trial" is going to open the door to that, then let us cure it now, when we know that every bar association in the State would condemn us if we opened the door to appeal to the Court of Appeals in disbarment proceedings; and for that reason I have offered the amendment so that the line will read: "In any criminal trial in any court the party shall have the right to one appeal".

Mr. Marshall — Mr. Steinbrink, why not say "In any criminal case"?

Mr. Steinbrink — I would be perfectly willing to accept —

Mr. Marshall — " and shall have the right to at least one appeal in a criminal case ".

Mr. Steinbrink — Does not " trial " cover it, Mr. Marshall? And that is the language of the old Constitution.

Mr. Marshall — But is a criminal case — it may be a preliminary examination.

Mr. Steinbrink — It is suggested to me, Mr. Marshall, that in a criminal case there is a decision?

Mr. Marshall — Don't you have it in a criminal case?

Mr. Steinbrink — You may have a case without a trial. It may be a case to admit to bail or the privilege of witness to testify, all involved in a criminal case, without being involved in a " trial ".

Mr. Byrne — Mr. Steinbrink, do you seriously think that the words here beginning " In any trial in any court whatever, the party accused shall be allowed to appear and defend in person and with counsel as in civil actions " would ever be construed, in view of the fact of what precedes in this section, as relating to disbarment proceedings?

Mr. Steinbrink — Mr. Byrne, I don't know what the courts are going to say when you begin to construe this with the additional words. A lawyer is accused of misconduct. He has his trial either before a referee appointed by the court, or an official referee. He is therefore accused, and he is on trial. Now, I say, in that class of cases there should not be the right of appeal.

Mr. Byrne — Is not a report made to a referee? Isn't it merely for the information of the Appellate Division, who then go upon that report? Isn't it really a hearing?

Mr. Steinbrink — The report is made in the same manner as every referee reports. Frequently, Mr. Byrne, you and I know that they are appointed not to hear and determine, but to hear and report, while in many cases they are appointed to hear and determine some particular issue which may arise and then to report after that their opinion. Now, we have got to avoid the doubt. Don't let us open the door now for doubt.

Mr. Clinton — I have just sent to the desk an amendment which I believe harmonizes this matter. It accomplishes what Mr. Steinbrink is attempting to accomplish, and prevents the possibility of that clause being construed to apply to disbarment proceedings. I ask to have it read.

The Chairman — The Secretary will read it.

The Secretary — By Mr. Clinton: Page 2, line 22, after the word " accused " insert the words " of a crime ".

Mr. Steinbrink — Mr. Clinton, may I suggest to you that you

might fall again into a pit, because a lawyer might be accused of a crime and for that the disbarment proceeding be instituted?

Mr. Clinton — I don't think any such construction would be made.

Mr. Marshall — Mr. Chairman, I think the suggestion made by Mr. Clinton should not be adopted, for this reason: The language in which he seeks to make a change — and I think the same is true of Mr. Steinbrink — has been in the Constitution for so many years, it would be inadvisable to change that. I think the language as proposed by the Committee "and shall have the right to at least one appeal" can apply to nothing other than a criminal proceeding; but in order that there may be no possible question, I suggest to add "and shall have the right to at least one appeal" — to add the words "from a judgment of conviction", so that would cover all possible doubts on that question.

Mr. Baldwin — Mr. Chairman, I shall vote against the amendment offered by Mr. Steinbrink. If this language as here employed means that an attorney who is accused and who is tried, and whose means of livelihood are taken away from him, should not have the same rights that you are granting to the woman in the streets, then I am going to vote against that proposition. I don't know what the meaning of this language is. I sincerely hope that it does grant to an attorney the right to at least one appeal. We have a criminal code; for violation of that, a man is tried, convicted, and you give him an appeal. Now, in the profession to which many members of this Convention belong, there is a code of conduct, not written, unwritten, and those who prescribe the code make the accusation, make the final determination, and I can conceive of some cases where a lawyer might be tried because of his relations with the very tribunal that made the accusation that tried him and disbarred him and I believe that in this sacred bill of rights there is one other right that ought to be recognized and I shall vote against Mr. Steinbrink's amendment.

Mr. Wickersham — These general statements lead to dangerous complications. The statement in the bill of rights that there shall be the right to at least one appeal from judgment of conviction, leaves us another field in the code of criminal procedure. How about the trial of impeachment? How about a judgment of conviction in those crimes and misdemeanors resulting in removal from office? Shall there be the right of appeal from that? I think we should do well to pause before we put these general glittering propositions in this bill of rights. The whole subject of appeals is dealt with in the Constitution and in the Code of Criminal Procedure, and I submit that we ought not here to lay down any general propositions.

Mr. Clearwater — We ought not to have any confusion of thought or action regarding the rights of attorneys in the discussion of this bill. The gentleman from New York, Mr. Baldwin, knows perfectly well, if he would stop to reflect, that when a complaint is made against an attorney it is sent to the grievance committee of the Bar Association. The grievance committee gives to a man charged with offense a hearing. If he can exculpate himself before that committee it reports adversely as to any action. If he does not, in the opinion of the committee, exculpate himself, the committee suggests to the Appellate Division, that a referee be appointed to take testimony and report the testimony to the Appellate Division, before which referee the attorney is heard in person and by counsel. The referee makes his report and transmits it to the Appellate Division and all the judges of the Appellate Division examine the report with extreme care, because they are lawyers; they are members of the bar: and, so far as I can recall in the entire history of this State, no lawyer ever has been improperly disbarred, and it is universal judgment of the profession that the Appellate Divisions and the old General Term, the old Court of Chancery, in matters of disbarment —

Mr. Dooling — I understand Judge Clearwater to state that he did not recall a case where a man had been unjustly disbarred. I ask him if he is not familiar with the case of the lawyer, Oppenheim, who was disbarred and reinstated after seven years of disbarment?

Mr. Clearwater — Yes, sir; I am familiar with the case of Mr. Oppenheim, and if this were the place to go into a discussion of the facts of that case, his disbarment and reinstatement, it would be a most interesting thing to do. But I am entirely unable to concur in the suggestion implied in the gentleman's question. Now, then, this condition of affairs in the inferior local courts of the city of New York may require an amendment, and apparently does, as to the provisions of the Code of Criminal Procedure. It is entirely a matter for the Legislature, the regulation of appeals from the inferior court and application for amendment to the Code of Criminal Procedure should be made to the Legislature to permit an appeal from any court whatever. The language of the Proposed Amendment of the Committee on Bill of Rights would apply to courts martial and the appeal to judgments of the Appellate Division. It would apply in a broader sense than we have contemplated. But a man convicted of crime should be allowed an appeal and the proper tribunal to address that request to is the Legislature of the State of New York, where it can be defined by legislative enactment, in accurate language, carefully guarded, so as not to embrace greater subject-matter

than the exact matter which the Legislature should deal with and to correct the exact abuse which evidently exists.

Mr. Marshall — I want to make one suggestion: I suggested to Mr. Steinbrink that the interpolation of the word "criminal" before the word "trial" in line 21, page 2, would be troublesome because it would run in the face and eyes of the Court of Appeals in the People versus Darling, 55 N. Y. 31, as to the right of the accused in a trial by court martial. I therefore suggest to Mr. Steinbrink to strike out the word "criminal" in line 21, and that in lieu of the proposal which I made, "appeal from a judgment of conviction", in order that there shall be no dispute on that, I suggest to insert the same language which is on line 26, page 2, the words "in any criminal case".

Mr. Steinbrink — That is entirely agreeable, and I think makes it entirely clear and at the same time meets Judge Olcott's suggestion.

Mr. Wickersham — Mr. Chairman, may I rise to a point of order and call attention of the Committee to the fact that under the rule this debate on the whole article must be closed at one o'clock. I suggest we ought soon to come to a vote on the question.

Mr. Blauvelt — Mr. Chairman, I have sent to the desk an amendment which would strike out the new matter on lines 4, 5 and 6 on page 3. I think its incorporation in the Constitution would seriously interfere with the completion of our State highway system and the elimination of grade crossings on State highways. I believe it is a matter that should be left wholly with the Legislature which now has jurisdiction to determine in what class of cases damages should be awarded for change of highway grades. The common law rule is that damage to an abutting owner whose land is injured by the change of grade of a street by a municipal authority is *damnum absque injuria,* in the absence of an express statutory provision in reference thereto. At present the Legislature has provided that where an incorporated village, or a town, and certain cities change the grade of highways damages will lie. That is not true in the case of counties or of the State. Where the State or a county in the course of construction of roads, change a grade, no damages will lie. Now, Mr. Chairman, as I read this provision, if it goes into the Constitution in every case of a State road where there is a change of grade, it will be necessary to pay damages to the abutting owner before construction work could go on, or at least it would be necessary to get a release or consent that changes in the grade might be made. In nearly all of the State roads to-day heavy changes are made in the grade, many cuts and many fills, are necessary.

Mr. Coles — I send to the desk an amendment. I would like to read it. On page 2, line 15, the words " presentment or " I have proposed to be stricken from the Constitution, so it shall read " No person shall be held to answer for a capital or otherwise infamous crime unless on indictment of a grand jury ". Many states of the Union, which in former years used the words " presentment or indictment of a grand jury ", have stricken out the words " presentment or " from their Constitution, because we do not hold any person for a capital or otherwise infamous crime on anything other than an indictment. The presentment is not recognized by our courts; it has not been for many years. The Code of Civil Procedure, at Section 273, prescribes " all the forms of pleading in criminal actions heretofore existing are abolished, and hereafter the forms of pleadings and the rules by which the sufficiency of pleadings is to be determined are those prescribed by this code ", and by Section 274 it prescribes that " the first pleading on the part of the people is the indictment ". We do not know a presentment as it appears in the Constitution and it is not recognized by the courts. The Constitutional Convention of 1867 sought to strike out the words " presentment or " and prescribed as follows: " No person shall be held to answer for a capital or otherwise infamous crime unless on indictment by a grand jury ". I see no use for the retention of the words " presentment or " except to confuse the lawyer and laymen and the courts. There have been many instances in which the courts have said that we do not recognize the presentment in the sense in which it is used in the Constitution, and as was laid down in the case ex rel. Jones in the Court of Appeals, Judge Cullen said: " We do not consider the presentment as in force and in effect under our laws and it is not recognized in our code as it appears in the Constitution ". I therefore hope that the words " presentment or " will be stricken from the Constitution and that persons charged with crime will be held upon an indictment only as described by our laws.

Mr. Wickersham — I say, Mr. Chairman, that I think we should now proceed to act on this section. If there are any more amendments, I ask that they be sent to the desk, and that then we take up the consideration of the sections in accordance with the subjects dealt with in the sections.

The Chairman — Are there any further amendments to be offered to Section 6?

Mr. Wagner — Mr. Chairman, I should like to ask the Chairman of the Committee on Bill of Rights what effect Section 6 would have upon — the closing sentence says " property to the extent damaged by change of grade or the building or maintenance

of a permanent structure, in, over, or under an abutting highway shall be deemed to be taken". Now, there are a number of cases in which cities have put up structures in which the question as to whether the abutting property owners were entitled to any damages or not, was raised, and they were denied damages. Now, will this revive all those actions?

Mr. Marshall — Mr. Chairman, I do not consider that it will revive any actions. It lays down a rule for the future. The law is prospective — constitutional provisions are prospective rather than retrospective. It was held by the Court of Appeals when the question first came up as to the provisions with regard to the abolition of the right of action for the recovery of damages for death, and it was there held that it was not retrospective, and that it had only prospective effect. It does not cover cases which have been heretofore disposed of.

Mr. Wagner — But, Mr. Chairman, the word "maintenance" in there means the continuation of the structure and, therefore, the continuation of the damage. So it would seem to me that the word "maintenance" would be a revival of actions for damages.

Mr. Olcott — It says "permanent structures".

Mr. Wagner — Yes, "permanent structures", like the viaduct in New York, where damages were denied. That is a structure that is maintained, and, therefore, damages are continued.

Mr. Reeves — It is to give damages in such cases.

Mr. Wagner — It is to give damages. Now, Mr. Chairman, that is the reason I am against putting into the Constitution a provision to revive damage actions against the city of New York.

Mr. Marshall — Mr. Chairman, it does not and it is not intended to revive any. It applies to future conditions.

Mr. Wagner — It certainly does that, if what Professor Reeves says is true, that the maintenance of those structures will permit the giving of damages in cases in which the court now says the adjoining property owners have no right of action, and it seems to me that that would be the effect of it so far as the city of New York is concerned. It would mean millions of dollars in damages which the city of New York would have to pay out of its treasury, and whatever a Legislature might do, it seems to me extraordinary that a provision of this kind should be put into the Constitution.

The Chairman — The gentleman from New York, Mr. Wickersham, has made a motion that we now proceed to vote upon these several amendments, numbering no less than twelve.

Mr. Deyo — Mr. Chairman, I offer the following amendment.

Mr. J. L. O'Brian — Mr. Chairman, I desire to oppose that amendment.

The Chairman — One moment, Mr. Deyo makes an amendment. Now, will the Secretary proceed?

Mr. J. L. O'Brian — Mr. Chairman, I think we should have a more adequate discussion of the last clause of Section 6, to which Mr. Wagner has just drawn attention, because it seems to me that this is a matter which is properly a legislative and not a constitutional matter. In the city of Buffalo, for example, this subject is partly dealt with already in the form of a legislative act. In fact, we have several legislative acts embodying provisions relating to this subject, and I am not clear from the explanation that has been made, as to what effect this Proposed Constitutional Amendment is going to have upon the charters of all of the up-State cities, and I think we should have a more full discussion, as it seems to me this is a very far-reaching decision. I am personally much in doubt about it, in view of the little light that has now been shed on it.

The Chairman — The question is now on the motion by Mr. Wickersham. The motion is that we proceed to vote on these several amendments. You have heard the motion. All in favor of the motion will say Aye, opposed No. The motion is carried. The Secretary will read the first amendment, which is the amendment by Mr. Coles.

Mr. Harawitz — May I suggest, Mr. Chairman, that we take up each amendment relating to each subject? There are three different subjects in the one paragraph.

The Chairman — I know there are, and for the sake of convenience, and in order to avoid confusion, we are going to take them up separately, and we are going to proceed with the first part of the section affected, that would bring us to the consideration of the amendment proposed by Mr. Coles; afterwards to the amendment proposed by Stowell, and so on.

Mr. Wagner — Mr. Chairman, I rise to a question of information.

The Chairman — The gentleman will state his question of information.

Mr. Wagner — Mr. Chairman, I desire to know whether there has been any amendment offered striking out the new matters on pages 4, 5 and 6 of page 3.

Mr. Olcott — You mean lines 4, 5 and 6?

Mr. Wagner — Yes, lines 4, 5 and 6.

The Chairman — There has been a half a dozen.

Mr. Latson — Mr. Chairman, may I rise to a question of personal information?

The Chairman — The gentleman from Kings, Mr. Latson, will state his question of information.

Mr. Latson — I should like to know whether an amendment has been filed by which the words in italics in lines 23 and 24 are to be stricken out?

The Chairman — About ten, sir. Now, gentleman, the Secretary will read the amendment offered by Mr. Coles.

The Secretary — By Mr. Coles: Amend Section 6 as follows: Page 2, line 15, enclose in brackets the words " presentment or ".

The Chairman — You have heard the amendment. All in favor of the amendment proposed by Mr. Coles will say Aye. All opposed will say No. The amendment is lost. The Clerk will read the next amendment.

The Secretary — By Mr. Stowell: Page 2, strike out the italics in lines 15, 16, 17, 18, 19 and 20.

The Chairman — You have heard the amendment proposed by Mr. Stowell.

Mr. Stowell — Mr. Chairman, is it permissible to say a very few words on that matter?

The Chairman — With unanimous consent it is.

Mr. Stowell — Mr. Chairman, I have not taken up much time —

A delegate — I object.

The Chairman — There is a single objection and, therefore, we will proceed to vote.

Mr. Harawitz and Other Delegates — No objection.

The Chairman — Proceed, Mr. Stowell.

Mr. Wickersham — Mr. Chairman, I don't like to object, but if we are going to get anywhere —

Mr. Stowell — Mr. Chairman, I don't want to take up much time —

Mr. Wickersham — Very well.

Mr. Stowell — I will only take three or four minutes.

The Chairman — The Chair is in the hands of the House.

Mr. Potter — I object, Mr. Chairman.

Mr. Harawitz and Other Delegates — No objection.

The Chairman — No objection. Judge Stowell will proceed.

Mr. Stowell — Mr. Chairman, I cannot talk until I can be heard. Mr. Chairman, I think that provision which has been inserted by the Committee is one of the most vicious that has ever been inserted in any part of the organic law of the State. The result of that provision is that by a combination of lazy district attorneys, astute, clever and shrewd lawyers for the defense and easy-going judges will make it so that the criminal element will not receive their just deserts in courts of justice. Now, just one more word, I cannot talk and I am not going to talk until I can be heard.

Mr. Parsons — I ask for order, Mr. Chairman.

The Chairman — The delegates will please come to order, and will listen to what Judge Stowell has to say.

Mr. Wickersham — I must object to further discussion, if we are going to complete our order here.

Mr. Stowell — I only ask you to wait two minutes.

Mr. Wickersham — I am sorry, Judge, but we must proceed.

Mr. Stowell — I don't understand what they mean by the use of the word "information" in there —

The Chairman — The Chair must follow the order of the House. The question is upon the amendment proposed by Judge Stowell striking out the matter in italics on certain lines mentioned in the amendment. All in favor of the amendment will please say Aye, all those opposed will say No. The amendment is lost. The Secretary will please read the next amendment.

The Secretary — By Mr. Wiggins: Same amendment as the one just defeated. Strike out the italicized matter in lines 16 to 21.

Mr. Wiggins — Mr. Chairman, that amendment has just been defeated, apparently, so it is unnecessary to take it up again.

The Chairman — There being no objection that amendment will be withdrawn. The Secretary will please read the next amendment.

The Secretary — By Mr. Winslow: Page 2, line 19, after the word "imprisonment" insert the words "or in the case of an indictable misdemeanor".

Mr. Marshall — Mr. Chairman, I suggest that the words "in case of" be stricken out, and I understand that Mr. Winslow consents to that.

Mr. Winslow — Yes, Mr. Chairman, I do. I think the language will be improved if the words "in case" be stricken out so the words to be inserted will be "or of an indictable misdemeanor". It makes better English.

The Chairman — Now, the Secretary will read the amendment as amended.

The Secretary — Page 2, line 19, after the word "imprisonment" insert the words "or of an indictable misdemeanor".

Mr. Marshall — The Committee accepts that.

The Chairman — You have heard the amendment as amended. All in favor of the amendment will signify their assent by saying Aye, opposed No. The amendment is adopted. The Secretary will read the next amendment.

The Secretary — Amendment by Mr. Aiken. Page 2, line 19, strike out "five" and insert "ten".

The Chairman — You have heard the amendment. All in favor of the amendment will please say Aye, opposed No. The amendment is lost. The Secretary will read the next amendment.

The Secretary — By Mr. Burkan: Page 2, line 21, after the word "trial" add the words "of any action or proceeding".

Mr. Burkan — This will cover disbarment proceedings. That is the purpose of my amendment.

The Chairman — You have heard the amendment proposed by Mr. Burkan. All in favor of the amendment will please say Aye, all opposed No. The amendment is lost. The Secretary will read the next amendment.

The Secretary — By Mr. Marshall: After the word "and" in line 23, page 2, insert the words "in any criminal case".

The Chairman — Gentlemen, you have heard the amendment proposed by Mr. Marshall. All in favor of the amendment will please say Aye, opposed No. The amendment is carried. The Secretary will read the next.

The Secretary — By Mr. Dunmore: Page 2, lines 23 and 24, strike out the brackets and the words in italics.

Mr. Wickersham — Mr. Chairman, that is the same as my amendment, offered to accomplish the same purpose, and the vote on Judge Dunmore's amendment will be equivalent to a vote on the one which I proposed. I earnestly hope that this will be adopted.

The Secretary — By Mr. Wickersham: Lines 23 and 24, strike out the words "and shall have the right to at least one appeal." Strike out the brackets in line 23.

The Chairman — You have heard the substantially equivalent amendments of Judge Dunmore and Mr. Wickersham. The delegates have already voted to amend this section by inserting the words "in any criminal case".

Mr. Wickersham — That was only to perfect it and not for the purpose of striking it out.

The Chairman — Not on the merits. All in favor of the amendment offered by Judge Dunmore and Mr. Wickersham will signify their assent by saying Aye, opposed No.

Mr. Wickersham — I ask for a rising vote.

The Chairman — All those in favor of the amendment will please rise. All opposed will please rise. The amendment is lost. The Secretary wil read the next.

The Secretary — By Mr. Steinbrink —

Mr. Steinbrink — That has been corrected by the amendment already offered by Mr. Marshall, and I withdraw it.

The Chairman — If there is no objection, Mr. Steinbrink's amendment will be withdrawn.

The Secretary — By Mr. Clinton —

Mr. Clinton — I will withdraw that, as Mr. Marshall's amendment has taken care of it.

The Chairman — If there is no objection, that will be withdrawn.

The Secretary — By Mr. Gladding —

Mr. Gladding — That has already been covered by Mr. Marshall's amendment. I withdraw it.

The Chairman — If there is no objection, it is withdrawn.

The Secretary — By Mr. Deyo: Amend section 6, page 2, line 26, as follows: Enclose in brackets the semicolon at end of line 26 and insert the following: "but the court and jury may in determining the guilt or innocence of the person on trial for a criminal offense take into consideration the failure or refusal of the person accused to testify in his own behalf". Page 3, line 1, strike out the word "nor" and insert "nor shall any person".

Mr. Marshall — Mr. Chairman, this matter has not been discussed or considered by the Committee or the House. I hope it will be voted down.

The Chairman — All in favor of the amendment proposed by Mr. Deyo will signify their assent by saying Aye, opposed No. The amendment is lost. The Secretary will read the next.

The Secretary — By Mr. Parsons: Page 2, line 26, after the word "himself" insert the following: "except that no person holding a public office or position shall be excused from testifying or from producing books or papers in his possession in any criminal case or in any civil action or proceeding brought by public authorities involving his official acts or in any investigation held by public authorities concerning any public matter including his own conduct."

Mr. Parsons — I ask unanimous consent to make a brief explanation of that amendment.

Delegates — I object, I object.

Mr. Parsons — I withdraw it, Mr. Chairman.

The Chairman — If there is no objection, the amendment will be withdrawn.

Mr. Quigg — It speaks for itself. I object to its withdrawal. I would like a vote on it.

The Chairman — The Secretary will read the next amendment.

The Secretary — By Mr. Steinbrink: Page 3, line 4, strike out "or the building or maintenance of a permanent structure in, over or under an abutting highway".

The Chairman — The question is now on the amendment of Mr. Steinbrink. All in favor of the amendment will please say Aye, opposed No. The amendment is lost.

The Secretary — By Mr. Blauvelt: Amend Section 6, by striking out all new matter in lines 4, 5 and 6, on page 3.

The Chairman — Gentlemen, you have heard the amendment. All in favor of the amendment offered by Mr. Blauvelt will please say Aye, opposed No. It is carried. The Secretary will read the next amendment.

Mr. Marshall — Are there any other amendments?

The Chairman — No more.

Mr. Marshall — I now move the adoption of this section as amended.

The Chairman — You have heard the motion. All in favor of the adoption of Section 6 as amended, will signify their assent by saying Aye, opposed No. The section as amended is adopted.

Mr. Wickersham — I move that the Committee do now rise, report progress and ask leave to sit again.

The Chairman — You have heard the motion. All in favor will say Aye, opposed No. It is carried.

(The President resumes the chair.)

The President — The Convention will come to order.

Mr. D. Nicoll — The Committee of the Whole has had under consideration the amendment proposed by the Committee on Bill of Rights, reports progress and asks leave to sit again.

The President — All in favor of granting leave will say Aye, contrary No. The leave is granted. The Convention stands in recess until half-past two o'clock this afternoon.

Whereupon, at 1:05 p. m., the Convention took a recess until 2:30 p. m. of the same day.

AFTER RECESS—2:30 P. M.

Mr. Wickersham — Mr. President, I suggest the absence of a quorum, and ask that the roll be called.

The President — The Secretary will call the roll.

Upon the call of the roll the following delegates responded: Messrs. Adams, Aiken, Angell, Austin, Baldwin, Bannister, Barnes, Barrett, Baumes, Bayes, Beach, Bell, Bernstein, Berri, Betts, Blauvelt, Bockes, Brackett, Burkan, Buxbaum, Byrne, Clearwater, Clinton, Cobb, Coles, Cullinan, Curran, Dahm, Daly, Dennis, Devo, Dick, Donnelly, Donovan, Dooling, Doughty, Dow, Dunlap, Dunmore, Dykman, Eisner, Fancher, Fobes, Foley, Franchot, Gladding, Griffin, Haffen, Hale, Harawitz, Heaton, Johnson, Kirby, Kirk, Landreth, Latson, Law, Leary, Leggett, Lennox, Lincoln, Linde, Lindsay, Low, McKean, McKinney, Mandeville, Mann, Martin, F., Martin, L. M., Marshall, Mathewson, Mealey, Meigs, Mereness, Newburger, Nicoll, C., Nicoll, D., Nixon, Nye, O'Brian, J. L., O'Brien, M. J., O'Connor, Olcott, Ostrander, Owen, Parker, Parmenter, Parsons, Pelletreau, Phillips, J. S., Potter, Quigg, Reeves, Rhees, Richards, Rodenbeck, Rosch, Ryder, Sanders, Sargent, Saxe, J. G., Schoonhut, Schurman, Sears, Sharpe, Sheehan, Shipman, Slevin, Smith,

A. E., Smith, E. N., Smith, R. B., Standart, Steinbrink, Stimson, Stowell, Tierney, Unger, Van Ness, Wafer, Wagner, Ward, Waterman, Webber, C. A., Weed, Westwood, Wheeler, Whipple, White, C. J., Wickersham, Wiggins, Williams, Winslow, Wood, Young, C. H., President.

The President — One hundred and twenty-six delegates having answered to their names, a quorum of the Convention is present.

Mr. Berri — Mr. President, the Committee on Printing offers the following report.

The Secretary — Mr. Berri, from the Committee on Printing, reports that they have considered the resolution of the Committee on Revision and Engrossment presented this morning, which was referred to the Committee on Printing, and recommends its approval and adoption.

The President — All in favor of agreeing to the report of the Committee on Printing will say Aye, contrary No. The report is agreed to and the resolution is adopted.

Mr. J. L. O'Brian — The Committee on Rules submits the following report and I move its adoption.

The Secretary — Mr. J. L. O'Brian from the Committee on Rules recommends the adoption of the following resolution: Resolved, That the Convention adjourn to-day at 10 o'clock p. m.

Mr. Sheehan — Mr. President, I move to substitute for the word "ten" the word "seven".

Mr. Foley — Mr. President, I move to further amend by making the hour 6 o'clock. It seems to me, Mr. President, those who stay most loyally in these last hours of the Convention suffer the most, and those who absent themselves escape the hardships at the wind-up. We can dispose of our business this afternoon speedily if the members will get down to business, and I think 6 o'clock, which will give us three hours and a half, ought to be sufficient. We have had the Bill of Rights article under consideration for four hours and a half, and it can be easily disposed of in the time I mention.

Mr. J. L. O'Brian — Mr. President, all these matters were considered by the Committee on Rules, and I trust the resolution as presented will be adopted. I do not think that, on the last day of this session, after the orderly procedure which has characterized the actions of this Convention, we should change that order. The motion is a fair one. It will allow fair consideration for the pending measure and such other measures as may be reached. If you adopt the amendment suggested by the delegate, Mr. Sheehan, or the delegate, Mr. Foley, it may conceivably prevent the consideration on third reading of the pending measure, the Bill of Rights article. That is a measure in which I have no personal interest.

but I think it should be given fair consideration. If the Committee of the Whole reports favorably upon it this afternoon, I think it only fair to those in charge of that measure that it should be reprinted and given a proper hearing on the order of third reading. I therefore ask the Convention not to change the proposed action but to leave the hour of adjournment at 10 p. m.

Mr. Stimson — Without any desire at all to embarrass the Committee on Rules, and simply to give full information to the Convention so that it may act intelligently on the matter, I will simply say that I have been inquiring as to the length of time that it will take to reprint and engross the pending matter under consideration now from the Committee on Bill of Rights. I find it will not take as long as the Chairman of the Rules Committee evidently feared. I am told by the printer and by the clerks at the desk that it could undoubtedly be reprinted and back at the desk here well inside of an hour after the last amendment. The Chairman of the Revision Committee tells me that their work may be done very promptly within that time, if that took place. I merely think that the Convention should have all this matter before it, so that it may see that it is not at all possible, if they should so decide, from any consideration in regard to this pending Bill of Rights measure, to finish their work by the hour set by Senator Foley. I agree with you that it would be very unfair to in any way curtail the rights of the Bill of Rights Committee which is now presenting to the Committee of the Whole an important measure, and it certainly should not be stopped by a failure to have it reprinted and come on in the order of third reading.

Mr. J. L. O'Brian — I am fully aware of all those facts, and I have no interest in the Bill of Rights. I am out of sympathy with many of the principal provisions in that measure, but I think we should not hazard the passage of that bill by any such arbitrary hour of adjournment as 6 o'clock, which is a little more than three hours away, when nobody on the floor can forecast the length of time the measure will consume in Committee of the Whole. It will take an hour to reprint it, and then if it is placed on the order of third reading it will take an hour for consideration. In fairness to the men in charge of this bill, and, as I say, in order that we may close our proceedings with the same regularity, orderliness, and dignity, which has characterized them hitherto, I ask that the Committee's report of 10 o'clock be adopted.

Mr. Barnes — Just one moment, if I may. It was my understanding in the Committee on Rules when we brought this hour of 10 o'clock it was only necessary to hold an evening session because of the printing of the Bill of Rights proposal. If that

proposal can be printed before 7 o'clock and we can adjourn by 7, I think it will be very desirable. According to the action of the committee, as I understood it, we were entirely ready to bring in a rule for seven, provided the printing could be done, and that the committee itself had no real opinion to express to the Convention at all. It is only the question of printing that is involved.

The President — The question is on the amendment reported by Mr. Foley to Mr. Sheehan's amendment.

Mr. Foley — My amendment.

The President — The question is on Mr. Foley's amendment.

Mr. M. J. O'Brien — Mr. President, couldn't this motion lie on the table until we get through with this pending Bill of Rights, and the Rules Committee can then call up the motion and it can be disposed of. I move that it lie on the table, unless there is objection, and then we can take it up when we get through with the Bill of Rights measure.

Mr. Wickersham — A number of the members are making their arrangements and I think we ought to decide now on the hour of adjournment. I hope Mr. O'Brien won't press that.

Mr. M. J. O'Brien — I won't press it.

The President — The question is on Mr. Foley's amendment to sit to six o'clock. All in favor will say Aye, contrary No. It is lost.

Mr. Foley — I was about to withdraw it, Mr. President.

The President — The amendment is lost. The question now occurs on the amendment of Mr. Sheehan, to sit until 7 o'clock. All in favor will say Aye, contrary No. The Ayes appear to have it. The Ayes have it and the question is upon the motion as amended. All in favor will say Aye, contrary No. The motion is agreed to.

Mr. Olcott — May I ask if there is a report from the Committee on Rules on the motion of mine which was submitted to it? I am requesting, through the Chair, to know whether there is any report from the Committee on Rules on my motion which was referred to it this morning.

Mr. J. L. O'Brian — The members of the Committee on Rules felt the only action they could take with reference to your matter — the matter of the committee report on the Committee on Civil Service — would be to make it a special order at the end of the Special Order calendar, for, certainly, it cannot be reached for action and therefore no action was taken on it.

Mr. Olcott — I move to disagree with that conclusion if it be in the form of an oral report and ask for a roll call on the proposition.

The President — All who second the demand for the roll call

will rise. There being a sufficient number, the clerk will call the roll on Mr. Olcott's motion to disagree with the report of the Committee on Rules. All in favor of disagreeing with the report of the Committee on Rules will say Aye as their names are called and all opposing it will say No. The Secretary will call the roll.

Those who voted in the affirmative were: Messrs. Adams, Angell, Baumes, Bayes, Beach, Berri, Brackett, Burkan, Byrne, Cobb, Coles, Cullinan, Dahm, Daly, Dennis, Deyo, Donnelly, Dunlap, Dunmore, Eisner, Eppig, Fancher, Fogarty, Griffin, Haffen, Harawitz, Heaton Johnson, Kirk, Landreth, Latson, Leary, Lincoln, Linde, McKean, Mandeville, Mann, Martin, F., Martin, L. M., Nixon, Nye, OBrien, M. J., O'Connor, Olcott, Ostrander, Owen, Parker, Potter, Reeves, Richards, Rodenbeck, Rosch, Ryan, Sargent, Schoonhut, Shipman, Slevin, Smith, R. B., Standart, Stowell, Tierney, Tuck, Unger, Vanderlyn, Wafer, Wagner, Ward, Webber, C. A., Weed, Westwood, Whipple, Wiggins — 72.

Those who voted in the negative were: Messrs. Aiken, Austin, Baldwin, Bannister, Barnes, Barrett, Bell, Bernstein, Betts, Blauvelt, Bockes, Buxbaum, Clearwater, Curran, Dick, Doughty, Dow, Dykman, Fobes, Ford, Franchot, Gladding, Hale, Kirby, Law, Leggett, Lennox, Low, McKinney, Marshall, Mealy, Meigs, Mereness, Nicoll, C., Nicoll, D., O'Brian J. L., Parmenter, Parsons, Pelletreau, Phillips, J. S., Quigg, Rhees, Ryder, Sanders, Saxe, M., Sears, Sharpe, Sheehan, Smith, E. N., Steinbrink, Stimson, Van Ness, Waterman, Wheeler, White, C. J., Wickersham, Williams, Winslow, Wood, Young, C. H., President — 61.

Mr. Clearwater — Mr. President, there is very great doubt in the minds of the delegates as to the exact question presented. Will the Chair kindly state the question again?

The President — The exact question is Mr. Olcott's motion to disagree with the adverse report of the Committee on Rules regarding the report of the Committee on Civil Service as to the amendments referred to that committee.

When Mr. Byrne's name was called he said: I ask to be excused from voting. In order that there may be no doubt in the minds of any one just what we are voting on, if the Committee on Rules is sustained there will be no chance for this Convention ever to pass on this question for the Spanish War Veterans. I withdraw my request and vote Aye.

Mr. Doughty — I think by inadvertence someone answered to my name I wish to be recorded as voting No.

The President — The Secretary will so record. Upon this vote,

the Ayes are 71, Noes 60, so that the Convention disagrees with the report of the Committee on Rules.

Mr. Wickersham — Mr. President, I move that the Convention now go into Committee of the Whole on pending order, and that the time allotted for discussion on the pending order be extended by one hour, speeches to be limited to five minutes each.

The President — What becomes of the order of third reading?

Mr. Wickersham — And the order of third reading be suspended until after the conclusion of the discussion on the Bill of Rights.

The President — The question is on the motion of Mr. Wickersham, to go into Committee of the Whole for discussion of the pending special order by the Committee on Bill of Rights, the time to be extended by one hour for consideration, and that the order of third reading be postponed until —

Mr. Wickersham — Until after the conclusion of the action of the Committee of the Whole on the Bill of Rights.

Mr. Olcott — I ask the leader whether he will not lay that motion aside to permit the conclusion of the subject upon which we just voted by roll call, to wit, to permit the motion to be made to permit a short discussion to-day of the civil service report.

Mr. Wickersham — Mr. President, I will not.

Mr. Olcott — Then I trust the House will defeat this motion at the present time for the sole purpose of giving me the opportunity that can be accorded under the rules for the discussion of the civil service report.

Mr. Wickersham — Mr. President, I shall object to the consideration of that motion as not in order.

The President — The question is upon Mr. Wickersham's motion. All in favor of Mr. Wickersham's motion will say Aye, contrary No. The Ayes appear to have it. The Ayes have it, and the motion is carried, and the Convention will go into Committee of the Whole for consideration of the pending special order. Mr. Delancey Nicoll will resume the chair.

(Mr. D. Nicoll resumes the chair.)

The Chairman — An hour is allotted to the consideration of General Order No. 63, Section 7.

Mr. Marshall — I now move the consideration of subdivision "a", paragraph marked "a" of Section 7.

Mr. Latson — Mr. Chairman, I wish to direct the attention of the chairman of the Committee on Bill of Rights to the language which was adopted, on page 2. I understand that language to be now, as amended, as follows: "And in any criminal case shall have the right to at least one appeal". And I beg to inquire from the chairman of the Committee on Bill of

Rights whether or not that is designed to apply to trial before courts martial or any military tribunal?

Mr. Marshall — Mr. Chairman, my attention has been directed to this subject by an inquiry made by Mr. Latson. I had very strong views on the subject before the inquiry was made, especially since there was not the slightest intent to deal with courts martial. I have in the light of subsequent events revised the subject, reviewed it, rather, and I have not had the slightest occasion to change my opinion. I will say with absolute certainty, not only that there was no intention to deal with the courts martial, but there is nothing in the language adopted which in any way affected it. The language of this provision read in accordance with its context indicates clearly that we are dealing with criminal matters, the matters in which there is information, and that the words which follow that clause, as well as those which proceded clearly show, that when we speak of a criminal case, we are not speaking of a court martial. A court martial deals with military law. It deals with an offense against the military law, which is tried there, while a criminal case is one which is dealt with in the courts of criminal jurisdiction and in accordance with the methods which are here provided. In respect to subdivision (a) of Section 7 I wish to say that it involves two provisions. The first of them is the one which effectuates the action which we have heretofore taken with regard to the Supreme Court Commissioners in condemnation proceedings and is merely supplemental to the provision in Section 8 of the Judiciary Article relating to the Supreme Court. You will see, for the reasons that I have before stated in my preliminary statement, the second section (which had not been printed in italics as it should have been) is to be found on page 3, lines 15 to 19, and covers the case of proceedings instituted by civil divisions of the State where much mischief has occurred in the past, where property has been taken into possession by a civil division and years have elapsed before the owner of the property receives compensation. This enables him, if the court deems proper, to get a payment on account, at least, during the pendency of the proceeding, which is believed to be a reform which is in the interest of justice and for the protection of people who have heretofore been great sufferers from the system that has been adopted.

The Chairman — Are there any amendments to Section A?

Mr. Leggett — May I ask, Mr. Marshall, why the same reason that calls for this latter provision should not apply to the State just as well as to a civil division?

Mr. Marshall — Well, I have heard of no particular abuse with regard to that, and those proceedings are all taken in the Court of Claims, and of course the application could not be made in

the Supreme Court. The situation is somewhat different and we have had our attention directed to the situation in the civil divisions.

Mr. Leggett — As far as the individual is concerned, is not the situation the same and the hardship the same?

Mr. Marshall — It might be; but as far as the State is concerned, that matter can be dealt with in other ways.

Mr. Sanders — Mr. Marshall, is there not even greater reason for this provision in the case of the State, for making this applicable, than in the case of municipalities, for the reason that a State cannot be sued, whereas a municipality can be haled into court?

Mr. Marshall — It is different with the State because you will bear in mind Section 7 of the present Constitution is as follows: "When private property shall be taken for any public use the compensation to be made therefor, when such compensation is not made by the State, shall be ascertained by a jury, or by the Supreme Court without a jury" — and there it lays down and intends to lay down a different rule with respect to the State from that which obtains in other divisions. That is the policy of the State from the earliest day and for that reason we felt that it would be entirely at variance with the general policy of the law to lay down the same rule with regard to the State as to the individual. Moreover there is an entirely different procedure with respect to taking of property by the State from that where it is taken by anybody else, because where property is taken by the State a hearing is entailed before the Court of Claims.

Mr. C. A. Webber — What is the public necessity that might lead the Supreme Court to "otherwise direct"?

Mr. Marshall — The idea is this: If, for instance, it is desirable to construct a subway and it is necessary to destroy buildings for the purpose of carrying on such an important work, then immediate possession may be necessary, and the idea is in such a case, the Court, recognizing the existence of a supervening public necessity and the fact that it may be impossible to arrive at the exact damages for a considerable period of time, may permit property to be taken into possession on the condition that a partial payment should be made in advance of the actual completion of the proceedings by the civil division. The matter is, therefore, left to the discretion of the Supreme Court, where the power should be lodged.

Mr. Sanders — Mr. Chairman, I offer the following amendment.

Mr. Wiggins — Mr. Chairman, I offer the following amendment.

The Chairman — Mr. O'Brien. The gentleman from New York, Mr. M. J. O'Brien.

Mr. M. J. O'Brien — I would call the attention of the Chairman of the Committee to the purport of his amendment, one sentence of it. At the last session of the Legislature, recognizing the evil which is aimed at in this section under discussion, the Legislature passed an act which allowed the Board of Estimate on the recommendation of the Comptroller to pay 60 per cent. of the assessed valuation before the title should pass, and before the property should be taken. There were cases where the property was taken and the title vested and the property owner did not get his money for fifteen years. That was recognized by the city authorities in the legislation which we had last year.

Mr. C. A. Webber — Everybody seems to concede that there was a necessity for some such provision as this, or some remedy for those people who have been suffering from this condition, in some instances, for a period of fifteen years because of the deprivation of their property, but this amendment does not afford that remedy. The procedure in these cases in the past has been this: The Board of Estimate of the city of New York has been required by law to pass a special resolution setting forth the necessity for the taking of this property immediately before they could take it. Now, we all thought that that was a protection. What will be the procedure in the future? Simply that the Board of Estimate will pass such a resolution, and they will direct the Corporation Counsel to go into court, and they will give notice of the hearing. The poor man whose property is going to be taken may not even be notified of the hearings. If he is notified of the hearings, he has got to go to the expense of employing a lawyer to go in and represent him upon that hearing.

Mr. Wickersham — Is not he compelled to go to that expense now? Isn't it necessary that the property owner should be represented in these proceedings for the purpose of having the fair value of his property fixed, establishing his title, and to get what he is entitled to when his property is taken? And is not this merely advancing the hour of the retainer of his attorney by perhaps a few hours?

Mr. C. A. Webber — By a good deal, perhaps, and the necessity of an additional expense is there.

Mr. Wickersham — Isn't it the fact that usually when the resolution of the Board of Estimate is under discussion there is publication of the fact, and the attorneys for the property owners are advised of that fact? They employ attorneys, and the work of the attorneys begins before the appointment of the commissioners

under the statute, and this is merely bringing it to the attention of the court at the time, when, under ordinary circumstances, the application is made for the appointment of commissioners, in connection with the application to fix the amount of money, if any, that must be paid before the city can enter into possession?

Mr. C. A. Webber — No, I do not agree with that. There are many men of that class who are poor men who do not employ any attorney, who do not have the necessity to divvy up with attorneys the amount of money that they receive for their properties.

Mr. Wickersham — Do you think that any owner of real property in the city of New York relies absolutely upon the corporation counsel and the commissioners employed by the court to fix the value of his property which the city takes without employing a lawyer.

Mr. C. A. Webber — They are willing to accept the valuation that is put on similar property and they do not all employ attorneys. Many of them rely on that. I do not want the situation to remain exactly as it is, that the corporation counsel can go in and select his own judge and do this as a matter of favor all of the time. The public necessity is not pointed out. The mere fact that the Board of Estimate will determine its public necessity brings you back into the same old rut again. The exception should be widened and a man should have his property until he gets his money. It is an outrage for anyone, I don't care whether it is a city or a private individual, to be deprived of their property and driven out into the street to wait years for their money. This does not remedy it. I offer the following amendment.

The Chairman — Is there any further discussion on subdivision "A" of Section 7?

Mr. Clearwater — I offer the following amendment which I think will be acceptable to the Committee on Bill of Rights.

Mr. Sanders — May the various amendments be read? We have not heard most of them.

The Chairman — If it is agreeable to the Committee, the Secretary will proceed to read the amendments in their order.

The Secretary — By Mr. Dunmore: Page 3, line 16, enclose in brackets the words "a civil division of the State" and insert in italics in place thereof the words "the State or a civil division thereof". On same page, line 17, strike out the word "supreme".

By Mr. Sanders: Page 3, line 15, strike out all following period and all of lines 16, 17, 18 and 19.

By Mr. C. A. Webber: Page 3, line 15, strike out the sentence beginning with the word "where" and all of lines 16, 17, 18 and 19 and substitute the following: "Except in the case of the State compensation shall be paid before such taking".

By Mr. Clearwater: Page 3, line 10, strike out the bracket preceding the word " but " and the bracket on line 11.

Mr. Marshall — The Committee accepts Mr. Clearwater's amendment.

The Chairman — No objection, that course will be followed.

The Secretary — By Mr. Marshall: Page 3, lines 16 to 19, print in italics the sentence beginning with the word " where " in line 15 and ending with the period in line 19.

By Mr. Foley: Page 3, lines 15, 16, 17, 18, 19, strike out the entire sentence and insert: " Where the proceedings are instituted by a civil division of the State the Supreme Court after hearing may direct a partial payment of compensation pending final determination ".

The Chairman — The question is on the amendment proposed by Mr. Dunmore. The Secretary will read Mr. Dunmore's amendment.

The Secretary — By Mr. Dunmore: Page 3, line 16, enclose in brackets the words " a civil division of the State " and insert in italics in place thereof the words " the State or a civil division thereof ". On the same page, line 17, strike out the word " supreme ".

The Chairman — You have head the amendment. All in favor of Mr. Dunmore's amendment will say Aye, all opposed No. The amendment is lost. The Secretary will read the next amendment.

The Secretary — By Mr. Sanders: Page 3, line 15, strike out all following the period and all of lines 16, 17, 18 and 19.

Mr. Sanders — This provision has been proposed by the Committee on Bill of Rights to correct a situation and evils which they say have been brought to their attention, which have arisen in the city of New York. So far as I know, and so far as I have heard in the discussion on the floor here, or outside of it, no such evils have appeared in any other part of the State and it seems to me that this should not be imposed upon other cities where no such evil exists. It is a matter, it seems to me, entirely for the Legislature to correct, and should not be " frozen " into the Constitution where it will make others suffer for sins of which they are not guilty.

The Chairman — You have heard the amendment proposed by Mr. Sanders. All in favor of the amendment will say Aye, opposed No. The amendment is lost.

The Secretary — By Mr. C. A. Webber: Page 3, lines 15 to 19, strike out the sentence beginning with the word " where " and ending with the word " direct " in line 19 and substitute the following: " Except in the case of the State compensation shall be paid before such taking ".

Mr. Marshall — The effect of that would be to make it impossible for the city to carry on important improvements because it would have to pay compensation, the amount of which nobody knows until after there has been a hearing and a trial before the city goes into possession. It would destroy the possibility of making a public improvement.

Mr. C. A. Webber — Mr. Chairman, the answer to that is they have done it for a hundred years or more and they have done it all over the country.

The Chairman — You have heard the amendments proposed by Mr. C. A. Webber. All in favor will please say Aye, all opposed No. The amendment is lost.

The Secretary — By Mr. Clearwater: Page 3, line 10, strike out the bracket preceding the word "but" and the bracket on line 11 of the same page.

Mr. Marshall — The committee accepts that. The fact the official referee has been thrown out of the Constitution makes it necessary to eliminate the brackets as well.

Mr. Clearwater — That has been in the Constitution since 1821 and should not be changed.

The Chairman — If there is no objection that amendment will be accepted by the committee.

Mr. Wickersham — You have to have a vote on that.

The Chairman — All in favor of that course will please say Aye, opposed No. It is carried.

The Secretary — By Mr. Marshall: Page 3, lines 15 to 19, inclusive, print in italics the sentence beginning with the word "where" in line 15 and ending with the period in line 19.

The Chairman — You have heard the amendment. All in favor will signify by saying Aye, all opposed No. It is carried.

Mr. Foley — If the committee is willing to adopt the language in the bill, page 3, lines 15 to 19, I will withdraw my amendment because it is only an alternative suggestion. It leaves to the Supreme Court to direct a partial payment. I would like to have the sentiment of the committee.

Mr. Low — Mr. Chairman, I hope very much that Senator Foley's proposed amendment will be adopted. I think that there may have been abuses without this rule but I think this rule goes too far and I think the proposal of Mr. Foley is a fair balance between the two extremes.

The Chairman — Does Senator Foley press his amendment?

Mr. Foley — I think I will.

The Chairman — The question is on Senator Foley's amendment.

Mr. Wickersham — May it be read?

The Chairman — The Secretary will read the amendment.

The Secretary — Page 3, lines 15 to 19 inclusive, strike out the entire sentence and insert: "Where the proceedings are instituted by a civil division of the State the Supreme Court after a hearing may direct a partial payment of compensation pending final determination".

Mr. Marshall — My criticism of this proposal is that it puts the burden on the property owner who may not know of the desire of the civil division to take possession of the property, to make application for a partial payment and his property in the meantime may have vanished from the face of the earth. The buildings may have been destroyed. The burden should certainly rest upon the party that takes the property, the burden of establishing the right to take possession and to fix the amount of partial payment.

Mr. Foley — My interest is for the property owner who, if he needs the money, may go in and make his application to the Supreme Court. We have got a precedent before us in the amendment that Judge O'Brien referred to, in permitting the payment of 60 per cent. of the assessed valuation to the property owner, but the trouble with that amendment is that he has to go to the Board of Estimate, which represents one of the litigants, and in many cases may refuse to make payment. My idea was that, if it was put into the hands of the Supreme Court, he could get his money much quicker.

Mr. Wagner — I just want to make this suggestion, that this matter has always been treated by the Legislature, and the mere fact that we are disagreeing here as to the details of procedure shows that this should not go into the fundamental law, where, if some situation or occasion arose with a municipality which would take three years to amend this provision. I think, as to procedure, for payment of compensation, we ought to leave the matter entirely with the Legislature and not put it in this inelastic way into the fundamental law.

The Chairman — The question is on the amendment offered by Mr. Foley. The Secretary will read the amendment.

The Secretary — Page 3, lines 15 to 19 inclusive, strike out the entire sentence and insert: "Where the proceedings are instituted by a civil division of the state the Supreme Court after hearing may direct a partial payment of compensation pending final determination". All in favor of the amendment will please say Aye, opposed No. The Chair is in doubt. All in favor will please rise. The gentlemen will be seated. All opposed will rise. The amendment is lost.

Mr. Marshall — Mr. Chairman, I now move the adoption of subdivision "a" of Section 7, as amended.

The Chairman — You have heard the motion. All in favor of the adoption of subdivision "a" as amended, will please say Aye, opposed No. The subdivision is adopted. We will now proceed to subdivision "b".

Mr. Marshall — There are no changes in subdivision "b".

The Chairman — Very well. Subdivision "c".

Mr. Marshall — I move the adoption of subdivision "b".

The Chairman — All in favor of that motion will please say Aye, opposed No. Carried.

Mr. Marshall — I now move the adoption of subdivision "c", where the only change made is to insert the words "swamp or" before "agricultural lands", and also to provide that the benefits of the construction of drains, ditches, and so forth shall be assessed against the property benefited, thus making sure the validity of the provisions adopted in 1894 and which was made ineffectual by the Court of Appeals in the matter of Tuthill, to which I referred yesterday, because of the fact that there was no provision in the Constitution that the benefits could be assessed upon the property benefited.

The Chairman — Does the Committee care to debate Subdivision "c"?

Mr. Cullinan — You use the word "swamp" on the first line of page 4. Why have you used that instead of "marsh"?

Mr. Marshall — I think they are considered the same thing. The amendments which were proposed used the word "swamp" and in central New York we all know what a swamp is, it is the same thing as a marsh.

Mr. Cullinan — Are you prepared to say on your standing as a lawyer that a swamp is the same as a marsh?

Mr. Marshall — Yes. There is a swamp in New York which means something different.

The Chairman — Is there any motion with regard to subdivision "c"?

Mr. Marshall — I move its adoption.

The Chairman — All in favor of the adoption of subdivision "c" will please say Aye, opposed No. Carried. We will now proceed to subdivision "d".

Mr. Wickersham — I offer the following amendment. If I may finish what I was saying, my admendment is to strike out subdivision "d", which is printed in italics, entirely.

Mr. Landreth — The right which is sought to be obtained by subdivision "d" of Section 7 is quite similar to the well-known mill acts of the New England States and other States of the Central West which have adopted the policy of the mill acts.

Mr. Marshall — I want to state with regard to this matter, as I said yesterday, that to my mind, it is the least important of

all the provisions in this article. I stated the history of it and the reasons for its proposal. I find, however, that it is a subject which will lead to controversy and will prolong this debate. We are anxious to get through and for that reason the Committee is prepared to accept the Proposed Amendment of Mr. Wickersham to strike out subdivision "d" from this provision.

Mr. Baldwin — I would like very much to have this prevail because I have been much in doubt in the last few days as to the fate of this article. I hold in my hand a circular which I received, and which no doubt all of you received, in which it is stated that there are certain interests back of this bill. They are designated in the circular as "criminal interests", "invisible government", "wolfish professional public benefactor" and "piratical promoters" in and out of the Convention. Inasmuch as I was addressed as the "Honorable" Arthur J. Baldwin, I knew that the writer did not include me as one of those behind it, and I am now glad to see that there is no one behind it and that none of those classes are represented in this Convention.

Mr. E. N. Smith — I am sending a substitute to the desk which I ask to be read.

The Secretary — By Mr. E. N. Smith: Strike out lines 7 to 12 inclusive, on page 4, and in lieu thereof insert the following in italics: "General laws may be passed permitting private property to be taken by the owner of a mill site for the development of power at such site and not elsewhere where such development will not damage any lawfully existing unabandoned dam or mill on making just compensation and upon terms and conditions and subject to regulations to be prescribed by such law. Nothing in this section shall affect any action or proceeding now pending".

Mr. E. N. Smith — I regret that the course of debate and the shortness of time are such as to prevent a full and fair consideration of a subject which is of vital importance to the people of the State of New York, particularly of all of the northern part of the State. The condition that exists in this State with reference to the possibilities of the development of water power is getting day by day and year by year more serious, so that the courts are being driven to holding principles of law which have never been accepted in this State and ought not to be accepted. We are, I think, the only State in the Union which has adhered to the old strict riparian right, common law doctrine, of England without change. This proposal that I introduced is taken directly from the mill acts of Massachusetts which have been adopted in all the New England States and in almost all of the States east of the Mississippi and which is in operation also in some of the western States and on the Pacific coast. It is a matter of great regret to me that time is not present to debate the situation. It

is also a matter of regret to me that there has been injected into the discussion of this matter the idea that the bill was offered or introduced or reported from the Committee on Bill of Rights in the interest of or in reference to any law suits. The proposal of the Bill of Rights Committee differs from this bill in this respect that this bill proposes to establish a clearly defined principle. What is the condition in this State to-day? Take the case of McCann vs. The Chasm Company, 211 N. Y., where the Court of Appeals was driven to refuse to grant an injunction to take down a dam where land above had been flooded because there was no actual damage. That is the first time in the history of this State that in any respect the principle of prior appropriation has been recognized and the court refused to grant equitable relief. Take the decision recently made in 164 A. D. in the case of Schwartzenberger vs. Oneonta Light and Power Co. where, in order to preserve a dam site, the court was driven to hold that the development of water power is a public use. That is a most vicious principle, a most dangerous doctrine. Massachusetts mill acts do not proceed on that theory. They proceed on the theory that there is a common interest of different people in a stream of flowing water; and that, where people cannot agree the court will intervene to adjust and determine their rights, just as they determine the rights of people in controversy in connection with common interest in property by partition. I am not going into this proposition, I am only bringing it to the attention of the Convention at this time, knowing that it cannot be adopted, but in order to place myself squarely on record in favor of the adoption of this proposition in a State which has more undeveloped water power than any other, perhaps, and also in a State which, for the next twenty years, is going to be confronted by accumulating litigation, because there is no such remedy as this provided in the Massachusetts system possible under our laws. This bill and this amendment is substantially in the form in which it was introduced by me.

The Chairman — The question is now on the amendment offered by Mr. Wickersham.

Mr. Mann — Mr. Chairman, I had proposed the same amendment.

Mr. E. N. Smith — Mr. Chairman, I have not yielded the floor. I was just looking for a paper. I want to explain the amendment for a minute or two so there may be no misunderstanding about it. It reads, "General laws may be passed permitting private property to be taken." By whom? "By the owner of a mill site for the development of power at such site and not elsewhere, where such development will not damage any lawfully existing

unabandoned dam or mill, upon making just compensation, and upon terms and conditions, subject to regulations to be prescribed by such laws. Nothing in this section shall affect any action or proceeding now pending." Now, I want to show you what they had to do down in North Carolina when they got into a condition somewhat similar to the condition we are getting into in this State. "Suits were common between the owners of adjoining lands and the proprietors of mills, because of the lands of the former being drowned by the mill ponds of the latter."

The Chairman — I must say to the gentleman from Jefferson that his time has expired. He can proceed only by unanimous consent.

Mr. Barnes — Mr. Chairman, I rise to a point of information.

The Chairman — The gentleman will please state his point of information.

Mr. Barnes — Do I understand there is a time limit in force now?

The Chairman — The five-minute rule as to speakers is in force.

Mr. Barnes — I thought the time limit had been taken off.

Mr. Wickersham — No, speeches are limited to five minutes.

The Chairman — The rule is, one hour for the consideration of the proposed amendment and speeches limited to five minutes each.

Mr. E. N. Smith — Mr. Chairman, may I be permitted to just complete the quotation?

The Chairman — Is there any objection? There being no objection, the gentleman may go on.

Mr. E. N. Smith — "For the slightest, as well as the most serious injury of this kind, the remedy was the same, an action on the case repeated time after time, until the nuisance was put down, or one or the other of the parties ruined in the controversy. It was unquestionably because of the mischiefs, real or supposed, which were disclosed by suits of this description, that the Legislature interfered by providing a new remedy which it was their will should be pursued instead of the former ones." That was the statement of the reasons why the mill acts were adopted in the State of North Carolina.

Mr. Landreth — It is only necessary to point out two particular points of difference between the old New England mill acts and the act proposed by Mr. Smith in his amendment. In the first place the Massachusetts and other mill acts are predicated on the existence of a public use or benefit, and nothing of the sort is indicated in the amendment proposed by Mr. Smith. In the second place, the Massachusetts, or the mill acts of New England,

merely gave the right to back-flow water from a dam or from a reservoir, onto other lands, i. e., they included simply the flowage rights, whereas the proposed amendment of Mr. Smith authorizes the taking of any private property which may in any way be made to advance the development of water power. I would like to read the preamble of the act passed in Massachusetts in 1796 entitled "An Act for the support and regulation of mills. Whereas the erection and support of mills to accommodate the inhabitants of the several parts of the State ought not to be discouraged by many doubts and disputes; and some special provisions are found necessary relative to adjacent lands and mills held by several proprietors; "Therefore," and then it proceeds to indicate the procedure necessary for a mill owner to take in order to acquire the right to flow lands in part only and it goes into great detail as to procedure. One of the closing portions of the act is as follows: The procedure involved the appointing of a jury by the court and the return of that jury's verdict to the court. The law reads as follows: "And when the said jury shall so inquire of the said yearly damages they shall also inquire and make return in their said verdict what portion of the year the said lands ought not to be so flowed; and during such portion of the year as the said jury shall certify in their verdict, that the public convenience and the circumstances of the case do not justify such flowing, and the said verdict being accepted by the court, this act shall in no manner authorize the said owner or occupant of such mill so to flow the said lands of others." You will notice that the term "such portion of the year" may mean no time whatever, or eleven months, or six months or four months, and includes the right to determine whether there is any public use whatever for the privilege. I hope the amendment offered by Mr. Wickersham will prevail.

Mr. Stowell — I want to call attention to the fact, that the Massachusetts mill act, so-called, is a legislative enactment, and it occupies no place in the Constitution of the State of Massachusetts, whereas the proposed amendment of Mr. Smith proposes to put it into the Constitution of the State of New York, where it does not properly belong, and where it should not be. Now, I will not take the time of this Convention to discuss this proposition, but I hope that this amendment will not prevail and that Mr. Wickersham's will prevail.

Mr. Clearwater — The matters involved in this amendment suggested by Mr. Smith are so absolutely colossal and far-reaching that it would be simply absurd to write them into the Constitution at this late hour without the slightest possibility of consideration. We are really in the infancy of the development of power or energy by falling water in this State, and it is absurd at this

hour, without any opportunity for careful consideration, to put such a broad provision into the Constitution.

Mr. Mann.— I ask that when we proceed to vote upon the amendments which are proposed, that we continue in accordance with the rules to vote upon the amendments in the order in which they have been submitted.

The Chairman — That is the rule.

Mr. Baldwin — I quite agree with Judge Clearwater that it is too late in the Convention to take up the discussion of a principle. It seems to me that this Convention has not been conducted upon principle but upon expediency. Early in the session of this Convention, I introduced a proposition involving a principle, which was that the development of water power and the transmission of electricity should be deemed a public use for which private property might be taken. That is the principle for which I contend, and in standing for that proposition —

Mr. Wickersham — Mr. Chairman, will the gentleman yield for a question?

Mr. Baldwin — I have but five minutes and I will then yield. I do not intend, by standing for that proposition that it should be limited to fit only the case of an existing mill owner. I intended that it should fit a proposition that would permit the people of this State to develop their natural resources. We have had a great deal of talk about conservation. I can see no conservation except in use, and the power that is coming from the hillsides of this State and is not developed is waste power, and if you mean conservation, you should do something with our rivers. I believe that the development of the hydro-electric principle has changed our whole fundamental conditions, and that no longer the riparian owner is the only one benefited. Towns, manufactories, fifty, one hundred miles away from the place where the power is developed are interested, and I believe it is a public use, because every time you develop power, that means a manufactory, that means employment for men, that means homes, that means taxable property in which the State is interested. And, it seems to me, and I have only this word of criticism, that the Bill of Rights Committee have failed in their purpose in that they have brought this proposition out at such a late hour that it cannot be given the consideration which it deserves, and I hope the whole article will be stricken out and every amendment.

Mr. Marshall — I desire to say that the Bill of Rights Committee has been trying for three weeks to get this matter on the floor for consideration, and has not succeeded until now. They are, therefore, not chargeable with dereliction, because of the fact that they have been unable until now to bring the matter before

the Convention for hearing, and I do not think that that is a very good reason that the gentleman should suggest why he should vote against this entire article which contains meritorious measures as has been indicated by the vote which has been here taken.

Mr. Baldwin — I wish to apologize to the chairman of the Committee. I did not mean the whole article. I meant the section with reference to the development of water power, that subdivision D.

Mr. F. Martin — Mr. Chairman, does that apology apply to the other members of the Committee, too?

The Chairman — Now, gentlemen, the Committee will please come to order.

Mr. E. N. Smith — I understood Mr. Landreth to say that the Massachusetts mill acts were based upon the principle of eminent domain.

Mr. Landreth — No.

The Chairman — The question now arises, first, on two amendments, equivalent amendments, one by Mr. Mann and the other by Mr. Wickersham. Under the rules, the Clerk will read Mr. Mann's amendment first.

The Secretary — By Mr. Mann: On page 4, strike out all of subdivision D, beginning on line 7 to and including line 12.

Mr. Marshall — Mr. Chairman, I have already stated the Committee on Bill of Rights acquiesces in this amendment, and also Mr. Wickersham's amendment to the same effect.

The Secretary — By Mr. Wickersham: Page 4, strike out lines 7 to 12, inclusive.

Mr. Wickersham — Mr. Chairman, I withdraw my amendment because Mr. Mann's amendment covers the same subject.

The Chairman — Without objection, Mr. Wickersham's amendment is withdrawn. The question, therefore, arises on the amendment proposed by Mr. Mann, striking out all of Subdivision "D". All in favor of the amendment will please say Aye, opposed No. The amendment is adopted. The question now arises on the substitute proposed by Mr. Smith of Jefferson.

Mr. E. N. Smith — I have served my purpose in putting this amendment forward at this time, and I see that the subject cannot receive the discussion which it should receive before any such amendment should be adopted and written into the Constitution, and I therefore withdraw my proposal.

The Chairman — If there are no objections, the amendment proposed by Mr. Smith is withdrawn. The Secretary will read the next amendment.

The Secretary — By Mr. Marshall: From line 13, page 11, strike out the title letter (e) and in place thereof insert (d);

from line 22, page 4, strike out the initial or title letter (f) and insert subdivision letter (e); from line 3, page 5, strike out (e) and insert (f).

Mr. Marshall — That may be divided. I suggest that we consider (e) first.

The Chairman — The question is on the amendment of Mr. Marshall. All in favor of the amendment will say Aye, opposed No. The amendment is carried.

Mr. Marshall — We now come to the new Section (d) just indicated. It is the provision of the present Constitution that relates to excess condemnation. I have, however, an amendment to it, which I referred to yesterday, one suggested by the board of estimate and apportionment of New York, and the amendment, I suppose, has the sanction of the corporation counsel of New York, dealing with the subject of abandoned streets.

Mr. Olcott — You put it at the end, Mr. Marshall

Mr. Marshall — At the end.

The Secretary — At the end of line 21, on page 4, insert the words "the legislature may also authorize cities for the establishment of a uniform system of streets to take real property in an abandoned street or highway and to sell and lease it".

The Chairman — You have heard the amendment proposed by Mr. Marshall. Is there any debate? If not, all in favor of the amendment proposed by Mr. Marshall will say Aye, opposed No. It is carried.

Mr. Marshall — I now move the adoption of the new subdivision (e) as amended. The amendment has been approved in its present form by the corporation counsel of New York, the purpose of which I explained yesterday. The purpose of subdivision (f)— the bill is now subdivision (e).

The Chairman — Subdivision (f)— It is now subdivision (e), is it not?

Mr. Marshall — Yes.

The Chairman — Are there any amendments to subdivision (e)?

Mr. Wiggins — I offer an amendment and move it be adopted.

The Chairman — Mr. R. B. Smith offers an amendment. Mr. Baldwin offers an amendment. Mr. Sanders offers an amendment. Are there any other amendments to subdivision (e)? If not, Mr. Steinbrink has the floor

Mr. Steinbrink — Mr. Chairman and gentlemen, it is unfortunate that we should proceed with a subject like this within a limited time, for in these proposals there are some very serious considerations to which careful attention should be given. Now, just stop and read the language of the old subdivision (f), new subdivision (e), rather carefully.

Mr. Marshall — We can save a great deal of time by considering the amended provision which I should like to have the Clerk read, because there is no use of discussing that which is already dropped out.

Mr. Steinbrink — Very well.

The Chairman — Is it the pleasure of the Committee that the Clerk shall read the several amendments?

Mr. Marshall — My amendment, I think, will save Mr. Steinbrink's discussion, that is, the Committee amendment.

The Chairman — Well, if there is no objection, the Clerk will read the several amendments proposed by the different members of the Committee.

The Secretary — By Mr. Marshall: From line 24, page 4, strike out the words "which shall be subject to review". Strike out of line 25, and from line 26, page 4, the words preceding the word "assessable" and substitute in place thereof the words "but neither the appropriate share of such cost which would be". From line 1, page 5, strike out the word "and" and substitute in the place thereof the words "were it not exempt nor". From same line, strike out the word "of" and substitute the words "incident to". After the word "relates" on line 2, page 5, insert the words "shall be specially assessed", so that the entire paragraph shall read as follows: "Subdivision (f)"—

Mr. Marshall — (e) now.

The Secretary — "Subdivision (e). The cost of any local municipal improvement may be imposed in whole or in part upon the private property benefited thereby, by special assessment, but neither the appropriate share of such cost which would be assessable against property exempted by law, were it not exempt, nor the expenses incident to the proceeding to which the assessment relates shall be specially assessed."

Mr. Steinbrink — Mr. Chairman, now just let us stop to think what we are going to do here. Here are 120 lawyers out of 168 delegates who are going to proceed to vote on a constitutional provision, and it is not before us on the desks of any member where we can analyze it and see what the effect of it is, and yet blindly we are going to rush ahead and vote this into the Constitution without thinking of what its effect will be except this: there is a provision with reference to assessing the cost of the proceeding on the surrounding property, and who among us can say —

Mr. Marshall — It does not. It takes it out. It assesses that generally.

Mr. Steinbrink — Do I understand, Mr. Marshall, that where your Committee originally reported that it might be assessable, now you are making a substitute that it is not assessable?

Mr. Marshall — Why, no. We provided originally — it is only a change in the phraseology. The effect is the same. General benefits, we said, shall not be assessed locally, and shall include, that is, general benefit, all sums otherwise assessable against property exempted by law, and the expenses of the proceeding to which the assessment relates.

Mr. Steinbrink — What I am taking exception to is the very first part of it: "The cost of any local municipal improvement may be imposed in whole or in part upon the private property benefited thereby by special assessment." We have already provided that condemnation proceedings in the first and second judicial districts should be conducted before these special Supreme Court commissioners. Now their salaries are part of the cost of the proceeding. Now, the way it has been done heretofore, the fees paid to condemnation commissioners are considered a part of the cost of the proceeding. Now that you are going to have Supreme Court commissioners, how are you going to determine what the cost of such proceeding is?

Mr. Marshall — Why, the answer is very simple. The entire cost of the proceedings whatever it may be is charged generally upon the municipality as a whole and is to be assessed locally. That is excepted. That is taken out.

Mr. Steinbrink — Then let me indicate to you, Mr. Marshall, that you are running into another snag; namely, in the widening of streets or the creation of small public parks, where the cost of that assessment is levied on the surrounding property only and is not chargeable against the whole county or against the whole city. I say to you, gentlemen, seriously, that we are dealing with a stick of dynamite, and we have not it on our desks, and we are asked to vote upon it without knowing what we are voting upon.

Mr. Marshall — Mr. Chairman, the gentleman is making an argument in favor of the language which has been adopted by the Committee and the principle of the Committee. As I indicated yesterday, there are cases where there is property which is exempt from taxation and assessment, property such as hospitals, orphan asylums, and the like.

A Delegate — Cemeteries.

Mr. Marshall — And cemeteries. Under the existing procedure the portion of the assessment which would ordinarily be levied upon the property, applying to such exempt institutions, if it were not exempt, is imposed upon the adjoining owners. Now, that is a great hardship. I had in my mind one case where a hospital was exempt from assessments. There were constructed in its vicinity improvements of a character which would have imposed upon that hospital an assessment of $125,000,000. Now, that

hospital was exempt. Now, the $125,000,000 of assessment are imposed upon the local property owners adjoining the hospital, whereas, in justice and equity that charge should be against the entire municipality, because that municipality participated in procuring that exemption and benefited from the hospital in question. Now, here we lay down a principle which will impose that assessment upon the public at large. It is a general benefit and not a local benefit. And so, also, with regard to expenses, the overhead charges of maintaining these proceedings. There is no more reason why the owner, the local property owner, should pay the expenses of the Supreme Court commissioners or any other body which assesses the expense than it would be called upon to pay the salaries of a judge, and we, therefore, have excluded from the amount which is to be charged for local improvements, the amount of the expenses of the proceeding, and the amount which would otherwise be assessed upon property which has been exempted. That is the principle for which we all contend. Mr. Steinbrink approves of it, and the language which we have employed in this amendment merely makes clearer and more satisfactory to the corporation counsel of New York, who is interested in this subject, and who admitted before the Committee that this change should be made, the purpose of the Committee.

Mr. R. B. Smith — Mr. Chairman, this is a shining example of special legislation for New York city, regardless of the conditions prevailing throughout other cities of the State. In my opinion, this is not a matter which should be incorporated in the Constitution, and I am confirmed in that opinion by a conversation which I have just had with Mr. Lawson Purdy of New York, whom I regard as the best informed expert on taxation in this State. My first amendment proposes to strike out this entire paragraph. Failing in that, which I trust will not fail, let me call your attention to line 23, to the words, "upon the private property benefited thereby". Does that preclude assessments upon State property, upon county property? We have had a fight with the State for years as to whether it should make an appropriation for the payment of local assessments upon State property in cities.

Mr. Marshall — Strike out the word "private".

Mr. R. B. Smith — I want to strike out "upon the private property benefited thereby". That applies to the rule of assessment which prevails. In the city of Syracuse, for years the rule for local assessments according to benefits was followed by endless litigation until finally we applied the mathematical rule of assessments for lineal foot of frontage and for square foot of superficial area; that rule has been approved by the United States

Supreme Court, and I certainly do not want our rule of assessment overridden and thrown back into the endless litigation which for years we have been endeavoring to get away from.

Mr. Reeves — Mr. Chairman and gentlemen of the Convention, the question involved in this amendment has received the most scrupulous care and study. Summing it up, it does just two things, and it cannot possibly, in my judgment, do any harm anywhere or in any city. It simply says that where there are exempt properties that otherwise would not be assessed locally, and that might put an extra burden upon surrounding private properties, that extra burden shall not thus be placed on them; and it says, secondly, that the expense of the condemnation proceedings shall no longer be assessed locally. Now, it sums up in those two things. It is saving your private property from loss that otherwise would occur. You are not going to take what would be an assessment on the cemetery or the schools or the orphan asylums and spread it any longer over the neighbors, and you are not going to make these local owners pay for the expense of the condemnation proceedings. That is all there is of it, and it is a thing that should be in the Constitution. It can do no harm anywhere, and in Greater New York it can do a tremendous amount of good.

Mr. Wiggins — I think, as Mr. Steinbrink says, very little attention has been given to this matter, and it is a subject so serious that it should be considered by the members of this Convention before they unfortunately pass it. Now, Mr. Marshall says the corporation counsel of New York is for this. He ought to be. He certainly ought to be. If you will pick up this document. I have never seen the amendment. We cannot pass on it except we hear it read. Here is what is in it: Upon the private property benefited you shall assess your local improvement. What does that mean? It means the city, where it has a park running along a street which has been paved, shall escape assessment and the payment of that assessment will be placed on the remaining property. Now, the way it is done is this. Where a street pavement is constructed on the street which a park adjoins, the proper share of the assessment is levied against the park and the city pays the amount from the general city funds. Now, you are going to put the city's share on the private property benefited. Now, they say churches and other charitable institutions escape assessment. That may be so in some special instances, but that is not true as a general rule, because now the law is that churches and charitable institutions are not liable to taxation, but they are liable to assessment, and any man who has anything to do with municipal affairs knows that. If they are not liable to assessment, it is because of some State law passed by the Legislature

specifically exempting them. And if you find that that is an abuse, then go to the Legislature and have them cure it there. As Mr. Smith says, this is special legislation which I think is of the most vicious kind, and which men in this Convention have no knowledge as to where it may lead. Find out what we have to vote upon, and then vote upon it intelligently, but unless you can find out then vote it out. This, in my judgment, will be a great disadvantage to the cities of the State.

Mr. Reeves — Can it do any harm to any locality that the educational or eleemosynary institution is assessed? This does not touch them. It does not have anything to do with it. Simply it is where it is now assessed, and would otherwise escape —

Mr. Wiggins — They don't escape at all.

Mr. Reeves — This does not touch them.

Mr. Donnelly — It seems to me that we are approaching this from the wrong angle entirely. If a man in Putnam county comes into New York county and sues a man on a promissory note or upon some case involving a defense the proof of which may be protracted for a week, our Code of Civil Procedure and statutes give him a bill of costs, give him the right to the use of our Supreme Court with all its attendants, a salaried judge at the rate of $50 a day is provided for him for a week, and the salaried jurors are provided at public expense. Now that is no different in the case of larger pieces of litigation. All of these overhead expenses are borne by general taxation, by general cost. In a proceeding such as this, for the condemnation of real estate, commissioners are appointed, a corps of engineers in a topographical bureau in the city goes out over the property and spends weeks and months over it. Their work is tabulated. The salary of the corporation counsel attached to the bureau of street openings who gets the proceeding, when it comes from the board of estimate — all these various items of expense down to pads and pencils are added up and totaled against the property in what is called a bill of expenses. Now, there is no reason why the man who sues in the Supreme Court should have all the machinery of the Supreme Court in civil actions borne at public expense, by general taxation, and the man who happens to be a party to condemnation proceedings have all these expenses tacked onto the awards and paid by adjoining property. This bill simply provides that the expense of these overhead charges shall be borne by the city at large, and it also provides that where there is exempt property, if that property is exempt from assessment, that so much of the proportionate share which that property should properly bear by assessment shall be borne by general taxation. In the Jerome avenue proceedings, Woodlawn cemetery, with a large area is exempt from

taxation, exempt by special law from paying these assessments, because of special legislation which passed this House, and that property was entirely exempt in the named proceeding, and the adjoining owners within the fixed area of assessment which is arbitrarily restricted by the board of estimate were required to bear so much of the assessment as proportionately should have been borne by Woodlawn cemetery. Mr. Wiggins and Mr. Smith talked about the general benefit rule. You know what the commissioner of assessment does. He takes a mathematical total based on awards and expense, and he is bound, tied, hand and foot, bound to assess every dollar of that against the adjoining property, within the limits fixed by the board of estimate. A commissioner of assessment cannot use his judicial discretion and say what the benefit is and reach a sum total, and assess that against the property and then bring in a deficiency report and have the balance borne by general taxation. The decisions of the courts require him to assess every dollar of this mathematical total by special assessment, including all of the expense. Now, in other words, his judicial discretion is limited by the mathematical total of awards and all of these overhead expenses I have described. There is no fairness in that. All this bill undertakes to do is to make these expenses such as commissioners' fees and so forth be borne by general taxation, as I understand it. The other expenses, likewise, whatever they may be, are to be borne by general taxation, and proportionate cost, proportionate assessment of exempt property, such as church property, and schools, and other like property — exempt from special assessment —

Mr. Parsons — Will the gentleman yield for a question? In order to accomplish what you wish is it necessary to put anything in the Constitution?

Mr. Donnelly — It is necessary. Every time an attempt is made in the Legislature the corporation counsel has influences up here to stop it. This is an oppressive situation, and there is no way to get about it except by legislation here — it is essential to overcome the great burden and the burdensome situation that exists in the city of New York —

Mr. Parsons — Is there any legal reason why this amendment is needed to accomplish what you have —

Mr. Donnelly — To give justice to people overburdened by commissioners that sit for fifteen years, drawing a salary — because the city of New York determines they want the property for the purposes of street —

The Chairman — The gentleman's time has expired.

Mr. Donnelly — May I say just one word, in answer to Mr. Parsons? I can cite to you, Mr. Parsons, in the city of New

York, half a dozen cases where the city — I know one case now where the city of New York vested title in June, 1907, and the money has not been paid, the awards are not fixed even at this date and the interest at the rate of six per cent. from 1907 is running to date, and many instances —

Mr. Parsons — Just a further question. What I wish to know is whether under the Constitution as it now is, the Legislature has not the power to do what it wishes if it chooses to exercise it.

Mr. Donnelly — I quite agree it has. An effort has been made to get the Legislature to do it and the Legislature will not do it.

The Chairman — The gentleman's time has expired.

Mr. Deyo — I offer an amendment.

The Chairman — Mr. Deyo has another amendment. The Secretary will proceed to read the several amendments. We have already heard Mr. Marshall's amendment. Now the Secretary will read the several amendments and we shall proceed to vote upon them.

The Secretary — By Mr. Steinbrink: Strike out all of proposed new substitute (e), on page 4. By Mr. Wiggins: Strike out on page 4, lines 22, 23, 24, 25, 26, and page 5, lines 1 and 2.

Mr. Wiggins — Mr. Steinbrink's amendment and mine may be consolidated, so I withdraw mine.

The Chairman — Very well.

The Secretary — By Mr. Baldwin: The same as the one last read. By Mr. Sanders: Page 5, line 2, after the word "law" and before the comma insert the words "from special assessment". By Mr. R. B. Smith: Pages 4 and 5, strike out all.

Mr. R. B. Smith — That is withdrawn.

The Secretary — By Mr. R. B. Smith: On page 4, lines 23 and 24, strike out the words "upon the private property benefited thereby". By Mr. Deyo: Amend page 4, line 23, the word "provide".

The Chairman — The first question arises upon the amendment proposed by Mr. Marshall. The Clerk will read it.

The Secretary — By Mr. Marshall: On line 24, page 4, strike out the words "which shall be subject to review". Strike out all of line 25, and from line 26, page 4, the words preceding the word "assessable", and substitute in place thereof the words "but neither the proportionate share of such cost which would be". From line 1, page 5, strike out the word "and" and substitute in place thereof the words "were it not exempt nor". From the same line, strike out the word "of" and substitute the words "incident to". After the word "relates" on line 2, page 5, insert the words "shall be specially assessed", so that the entire paragraph as amended shall read as follows: "(e) The cost of

any local municipal improvement may be imposed in whole or in part upon the private property benefited thereby by special assessment, but neither the proportionate share of such cost which would be assessable against property exempted by law, were it not exempt nor the expenses incident to the proceeding to which the assessment relates shall be specially assessed".

The Chairman — All those in favor of the amendment of Mr. Marshall will please rise. The gentlemen will be seated. All those opposed will rise. The gentlemen will be seated. The amendment is adopted. The Secretary will read the next one.

The Secretary — By Mr. Steinbrink: Strike out all of old subdivision (f), new subdivision (e).

Mr. Baldwin — I would like to have unanimous consent to say just a word for Manhattan.

The Chairman — Unless there is unanimous consent, Mr. Baldwin cannot proceed. Is there objection?

Delegates — Yes.

The Chairman — The Secretary will proceed with reading the amendments — now, gentlemen, you have heard the amendment of Mr. Steinbrink. All in favor of Mr. Steinbrink's amendment will say Aye.

Mr. Steinbrink — Rising vote.

The Chairman — All in favor will please rise. The delegates will be seated. Those opposed will rise. The amendment of Mr. Steinbrink is adopted. The Secretary will read the next amendment. Now, the question will be upon the section as amended.

Mr. Marshall — We now come to Section 2.

Delegates — Section (g).

Mr. Marshall — Section (g).

The Chairman — Subdivision (f).

Mr. Marshall — Now (e). I move on line 5, page 5, to change the word "shall" to "may".

The Chairman — Gentlemen, are there any other amendments to subdivision (e)? Mr. Cullinan has an amendment. Mr. Baldwin has an amendment. Are there any other amendments or additions?

Mr. Cullinan — Is it open for debate?

The Chairman — Open for debate.

Mr. Cullinan — Is this open for debate?

The Chairman — Yes, open for debate.

Mr. Cullinan — The amendment as reported by the Bill of Rights Committee provides that the State in taking property for the maintenance and operation of reservoirs for the regulation of the flow of streams, and where property is taken with that purpose, that the benefits may be assessed on private and public

property described. Now, there is nothing said in there with reference to taking property by the State for the construction and maintenance and operation of reservoirs and dams for the development of water power or providing water for navigation of the canals of the State. Now, the amendment of the Committee is a measure for the benefit of private owners. The canals of the State, when they are in operation under the improved Barge Canal Act, will require from two to three times as much water as used now for the present canal. Incidentally, in connection with the construction of reservoirs and dams for securing that additional water, there will be an opportunity for developing water power. It is for this purpose this amendment is submitted.

Mr. Baldwin — Mr. Chairman, I take it that the object of this amendment is to legalize what is known as the Machold bill, passed last session of the Legislature, and I take it that the real explanation of the Machold bill is the famous Black River situation. In 1849 the State took some water from Black River for canal purposes and it condemned the water rights of the riparian owners and paid for them. Some ten or twelve years later the owners turned up in the Legislature and said: "You are diverting some of the water from Black River and we would like to have you build us a dam." And so a dam was built in the Adirondacks and for 45 years it has been maintained at public expense for the benefit of the power owners. This was done on the theory of paying the power owners in kind. Again, in the '80s, some more dams were built, and have ever since been maintained at State expense. Then the Fulton Chain dams were built in the nineties and maintained at public expense for the purpose of supplying water to people whose property had been condemned in '49. For the same taking which occurred in 1849, the power owners were again reimbursed in kind, but they are never satisfied. They came to the Legislature of 1915 and secured the passage of a law couched in very nice language, providing for a new kind of corporation, which has the power in the name of the State to build reservoirs for the regulation of streams. The corporation itself is composed of three commissioners, two of whom must be residents in the district, and one other. Now, after they get the dams built they are to apportion the cost between the private owners, the municipalities and the State if any water has been diverted for the purpose of the canals. Now, I think the proponents of that bill recognized that it is unconstitutional at the present time, and they would like to put it in here, and I would like to ask the chairman of the Committee if this amendment has any other purpose than to legalize the act of the Legislature and authorize the assessment upon the people of the State because of

alleged canal improvements, for water, regulating the flow of the Black River, thereby reimbursing the same owners again for the water taken in 1849.

Mr. Marshall — The attention of the Committee was called to the fact that there was a bill passed by the Legislature known as the Machold bill which related to the regulation and flow of streams, and the point raised was as to whether or not where any expense of the regulation of the flow of streams occurred, the State in part, the municipalities in part, and private owners in part, would be benefited, whether that expense and cost of maintenance and construction could be divided and apportioned equitably among those benefited, and the purpose of this amendment is to make it possible where the State enters upon such a plan of stream improvement for the purpose of regulating the flow of a stream so that the water may be husbanded and conserved as required, that the expense should be charged equitably and apportioned equitably, partially upon the State if it has been benefited, partially upon the municipalities if they have been benefited and upon the owners of water rights on the stream if they have been benefited. That is all it is and undoubtedly it will silence any doubt of the constitutionality of a measure of that sort precisely as we have silenced the question of the right of assessing drainage benefits upon the people whose lands have been improved by agricultural drainage, that is all.

The Chairman — The Secretary will now proceed to read the next amendment.

Mr. Wagner — I would just as soon have the amendments read first.

Mr. Marshall — Line 5, page 5, strike out the word "shall" and substitute the word "may".

Mr. Wagner — Mr. Chairman, I just want to say that I hope that this section meets the same fate as the preceding section, namely, that it be eliminated from the Bill of Rights amendment. Mr. Baldwin has stated that this is an attempt — and it is conceded by the Chairman — to legalize an unconstitutional act passed by the Legislature last year. The bill was so bitterly contested in the Senate that after the work of many hours they finally secured 26 votes in the Senate, and I think in the Assembly it experienced just as great difficulty in securing passage. Now, the whole question involved is to make in the Machold bill — is to make the State out of the State treasury pay for the improvement of the Black River and promote and increase the water power there. It provides, firstly, that the board of managers of this district shall be appointed by the Governor. Two out of the three must be residents of the water power district, so that two

out of the three will naturally have to be interested in the water power projects, and those are the gentlemen who, when the work has been completed, determine what the municipality benefited shall pay, what the individual power owners benefited shall pay and what the State benefited shall pay.

Mr. Marshall — You will notice the provision reads: "The Legislature may provide for the apportionment equitably." It merely speaks of what may be done hereafter.

Mr. Wagner — It was conceded that the object was to make constitutional a law which is now unconstitutional, so that it surely must refer to a period past.

Mr. Marshall — The statement was not that; the statement was not that. The statement was that there had been measures the constitutionality of which had been in doubt and therefore such a measure as this would put it into the power of the Legislature to provide for equitable apportionment of the benefits upon those that received them. That is all.

Mr. Wagner — I want to explain the tendency of the bill so that this Convention may know what it is doing when it incorporates this into the Constitution. These water power gentlemen — and they may do it with the best of motives — will see the extraordinary benefits to the State by the construction of this dam, and the little benefit to the locality or the power owners and you will find that the State will have to pay the larger part of the improvement, although the improvements will largely and permanently increase the water power for the benefit of the power interests of the locality.

The Chairman — The Secretary will now read the other amendment.

The Secretary — By Mr. Cullinan: Page 5, after the period in line 9, add the following: " when property is taken by the State for construction, maintenance and operation by it of reservoirs or dams for the development of water power, or providing water for the navigation of the canals of the State, general laws shall be passed for the appropriation of such property and payment of just compensation therefor ". By Mr. Cullinan: Strike out the period. By Mr. Dykman: Page 1, line 1, strike out the word " and " and insert after the word " seven " the words " and nine ". Page 5, after line 9, insert the following: Section 9. No law shall abridge the right of the people peaceably to assemble and to petition the government or any department thereof —

Mr. Dykman — I assumed, Mr. Chairman, my measure would not be taken up until after (g) was disposed of. It is not germane to " g ".

The Chairman — It is not. Now, gentlemen, we have three

amendments to this. The first amendment is the amendment of Mr. Marshall as read. All in favor of the amendment by Mr. Marshall will say Aye, opposed No. It is adopted. The second is the amendment by Mr. Cullinan. All in favor of the amendment by Mr. Cullinan will rise.

Mr. Sheehan — Mr. Chairman, may I ask Mr. Cullinan if the object of this proposition is that the State shall go into the power business? Is that the purpose of it?

Mr. Cullinan — Eventually there will be surplus water to dispose of.

The Chairman — All in favor of the amendment by Mr. Cullinan will please rise. All opposed will please rise. The amendment is lost. We will now proceed to the amendment by Mr. Baldwin to strike out the whole section.

Mr. E. N. Smith — Mr. Chairman, Mr. Baldwin has made a statement in reference to our work which is not in accordance with the facts, unintentionally, I am sure. Gentlemen, as far as the statement is concerned that the Machold bill —

The Chairman — I must say to the gentleman from Jefferson that debate on this section is closed. We are now on the amendment proposed by Mr. Baldwin. All in favor will please rise. The delegates will please be seated. Those opposed will please rise. The amendment is carried — 49 Ayes, 43 Noes. The section is stricken out. We now have the amendment of Mr. Dykman, and we must proceed with great diligence because the time is getting short.

The Secretary — By Mr. Dykman: Page 1, line 1, strike out the word "and" and insert after the word "seven" the words "and nine". Page 5, after line 9, insert the following: "No law shall abridge the right of the people peaceably to assemble and to petition the government or any department thereof; nor the right of the electors, or any number of them, to associate and select candidates to be voted for at any election for public office in such method as they may deem proper; nor shall any divorce be granted otherwise than by due judicial proceedings; nor shall any lottery or the sale of lottery tickets, pool selling, book making or any other kind of gambling hereafter be authorized or allowed within this State, and the legislature shall pass appropriate laws to prevent offenses against any of the provisions of this section".

Mr. Marshall — Mr. Chairman, I rise to a point of order. This is not germane to anything in this article.

The Chairman — The Chair so holds.

Mr. Dykman — One moment, Mr. Chairman. I appeal from the decision of the Chair. This bill amends Article I and my amendment proposes to amend Article I. If the Chair will look

at the amendment, the Chair will discover that the proposition is to amend Article I, Section 9. I will read the first part of the proposed amendment: Strike out from line 1, page 1, the word "and" and after the word "seven" insert the words "and nine". The amendment introduced into Section 9 of Article I words appropriate to restore to political parties control of their own affairs.

The Chairman — The Chair holds that the amendment must be germane in subject. In the judgment of the Chair this amendment is not germane.

Mr. Marshall — I move the next section.

Mr. Dykman — Wait a moment, Mr. Marshall. I surely should have the right to appeal from the decision of the Chair. I appeal to the Committee from the ruling of the Chair.

Mr. Marshall — I call attention to the fact that the amendment merely provides for —

Mr. Dykman — Rising vote.

The Chairman — Gentlemen, the question is, shall the decision of the Chair be sustained. All in favor of sustaining the decision of the Chair will please say Aye, contrary No. It is carried.

Mr. Marshall — I move the next section.

Mr. Parsons — I offer an amendment.

Mr. Wickersham — I offer the following amendment.

Mr. Cobb — I offer an amendment.

Mr. M. J. O'Brien — I offer the following amendment.

Mr. Steinbrink — I offer an amendment.

Mr. C. Nicoll — I offer an amendment.

Mr. Wiggins — I also offer an amendment.

Mr. Marshall — I think we would save a great deal of time in this matter if the Chair will listen to Mr. Wickersham's motion which is about to be made, and to which the Committee consents.

The Chairman — One moment, please. The Chair desires to make a statement. Has the Committee not overlooked Section 2, line 10, on page 5?

Mr. Marshall — That is what we are about to deal with.

The Chairman — That is where Section 1, Article VII is repealed.

Mr. Marshall — That is the subject which we are to consider now, if Mr. Wickersham's amendment is read.

Mr. Wickersham — My first amendment is to strike out the brackets on lines 12 and 14 and strike out lines 10 and 11, so as to leave Section 1 of Article VII precisely as it now is.

Mr. Parsons — I have offered an amendment which strikes out line 10 and everything else on the page, which will leave the Constitution just as it is now in those sections, so that, if my amendment is adopted, that ends the matter.

Mr. Wickersham — I suggest that we take a vote on that. That will save time.

The Chairman — The Clerk will read the amendment of Mr. Parsons which will leave the Constitution just as it is.

The Secretary — By Mr. Parsons: Page 5, strike out line 10 and all the remainder of the page.

Mr. Marshall — This is a matter which — the Committee has no objection to striking out the brackets on lines 12 and 14 — because of the fact that time is pressing and we desire to have this matter come to third reading to-day. We also consent to striking out from line 18 the words "in any manner" and the word "individual" which are italicized. I explain the reason why this clause was put in. It would not be necessary to repeat it. The Committee is also prepared to strike out from line 20 the words "or its use permitted by", so that the provision will then read: "Nor shall public property be granted or leased, to any individual, association or corporation without just compensation". Then there is another amendment which we have accepted which provides "other than a civil division of the State" so that the provision with regard to property of the State being disposed of would be exactly like the provision which is now in the Constitution in regard to the disposition of the property of a city, county, village or town. The only addition, therefore, that is made to the present Constitution in this regard is as to prohibiting public property from being granted or leased without just compensation except to a civil division of the State.

The Chairman — We will take up the question of the adoption or rejection of the amendment proposed by Mr. Parsons.

Mr. Barnes — I don't think this Convention should act upon this matter without careful deliberation. It is very simple. It can be understood by every man in this room. The present Constitution prohibits any municipal corporation of the State from loaning its credit or giving its money to an individual. The present Constitution of the State provides that the credit of the State cannot be loaned to any individual. The Committee on the Bill of Rights, in its wisdom, brought in the proposal that the money of the State shall not be given to any individual. Through some arrangement, I know not what, it has now withdrawn from that intelligent position and if you adopt Mr. Parsons' motion and strike out the words that the Bill of Rights Committee has placed here, leaving the giving of the money of the State to an individual, you go before the people of the State as having declared in favor of having the State of New York, through its Legislature, give away its money to individuals. That is all there is of the subject. I hope Mr. Parsons' motion will not prevail.

Mr. Wickersham — Mr. Chairman, in some incomprehensible way this provision as presented by the Committee on Bill of Rights practically has again laid before this Convention the proposition which was involved in Mr. Barnes' proposal, which was discussed before this Convention some days ago, and absolutely disposed of.

Mr. Barnes — I don't think you understood that proposal when it was before the Convention. I don't think you understand it now. This is simply one angle. The question of giving away the public money of the State to individuals without return. That is the question before the House.

Mr. Wickersham — I well understood that proposition and this House understood it, and we then decided that the great State of New York should not place itself in such position that it could not relieve suffering or provide for some great calamity, because in its fundamental law it had been prohibited from giving any of its money in aid of any beneficent purpose, however compelling. That is the proposition we have here and that is the proposition I hope we shall again vote down as we have done once.

The Chairman — The question is now on the amendment of Mr. Parsons. Are you ready for the question upon Mr. Parsons' amendment? The question is to leave the Constitution as it is now. All in favor will please rise. The gentlemen will be seated. All opposed will please rise. The amendment is carried — 57 Ayes, 55 Noes.

Mr. Wickersham — I now move to amend by reincluding in this section the provisions of the present Section 1 of Article VII of the Constitution, and Section 9 of Article VIII as they stand in the existing Constitution.

Mr. Barnes — I cannot see the consistency.

Mr. Parsons — Point of order. My point of order is that it is unnecessary. By striking out Section 2, which repeals Section 1 of Article VII, and striking out Section 3, which purported to amend Section 9 of Article VIII, we have left in the Constitution Section 1 of Article VII and Section 9 of Article VIII.

Mr. Wickersham — That is all I want, to make it clear, because there has been some impression here that by the adoption of Mr. Parsons' amendment we have repealed those two sections. If it is perfectly clear, I withdraw the motion.

Mr. Barnes — I should like to offer an amendment to return to the bill, striking out Section 1 of Article VII, because if you are going to give away the money of the State there is no reason why you should not give away the State's credit. I withdraw my amendment.

Mr. Marshall — I desire to make this motion: After the word

"undertaking", line 19, page 5, strike out the period and substitute a semicolon and then add the words which are now in italics: "nor shall public property be granted or leased to any individual, association or corporation, other than a civil division of the State, without just compensation".

Mr. Parsons — A point of order. That has been disposed of and voted on.

Mr. Marshall — That has not been disposed of.

The Chairman — It seems so to the Chair.

Mr. Marshall — The question is whether public property shall be given away without compensation.

The Chairman — It was covered by Mr. Parsons' amendment and the question is now upon the Bill of Rights article, General Order No. 63, as amended. All in favor of the adoption of General Order No. 63 will please say Aye, opposed No. It is adopted.

Mr. Wickersham — I now move that the Committee rise and report its action on this bill.

The Chairman — All in favor of Mr. Wickersham's motion will say Aye, contrary No. It is carried. (The President resumes the Chair.)

The President — The Convention will come to order.

Mr. D. Nicoll — The Committee of the Whole has had under consideration General Order No. 63, has amended the same and adopted the same as amended and has instructed me to report it favorably to the Convention as amended.

The President — The question is upon agreeing to the report of the Committee of the Whole.

Mr. Dahm — I offer the following motion.

The Secretary — By Mr. Dahm: I move to recommit the bill just reported, General Order No. 63, with instructions to amend by inserting in line 5, page 1, after the word "suspension" the words "nor shall any military tribunal exercise jurisdiction over a civilian while the regularly constituted State courts are open to administer justice" and to report the same forthwith as amended.

The President — The question is on the motion to recommit with instruction to amend as read by the Clerk.

Mr. Dahm — I ask for a roll call on this question.

The President — A roll call is demanded. Is the demand seconded? There is not a sufficient number up. The roll call is denied. All in favor of the motion to recommit will say Aye, contrary No. The motion is lost. The question is upon agreeing to the report of the Committee of the Whole. All in favor will say Aye, contrary No. The Ayes have it. The report is agreed to and the amendment will go to the Committee on Revision.

Mr. Wickersham — I now move that the Convention go into Committee of the Whole for consideration of the remaining special orders.

Mr. Olcott — I ask the floor for the purpose of giving notice that I intend at a subsequent meeting to move to suspend the rules and that the Committee of the Whole take into consideration Proposition No. 29.

Mr. Donnelly — I was unable to be present during the roll call on the Spanish War Veterans bills. Had I been present I would have voted in the affirmative.

The President — Will Mr. Wickersham give his attention to the Chair?

Mr. Wickersham — I move that we resolve into Committee of the Whole on the special orders now pending.

The President — The Chair calls attention to the fact that we are now in the Convention on the order of third reading, but the bill which has already been reported from the Committee of the Whole and agreed to by the Convention, that is, the amendment to the Bill of Rights, cannot be voted upon until it is printed.

Mr. Wickersham — I move that my motion be postponed until a quarter after six, when it ought to be here — until it returns, as soon after a quarter after six as the bill returns.

The President — The motion is that the Convention return to the Committee of the Whole for the consideration of the pending special order and return to the Convention immediately upon the return by the Committee on Revision and Engrossment of the amendment of the Bill of Rights.

Mr. Wickersham — I so move.

The President — All in favor of the motion will say Aye, contrary No. The motion is agreed to.

Mr. Bayes — Mr. President, I move to substitute for the consideration of the Committee of the Whole, General Order No. 68.

Mr. M. J. O'Brien — That is the proposition, Mr. President, with regard to areas and heights of buildings. I want to make this suggestion to my friend —

The President — Will Mr. O'Brien suspend for a moment? Will Mr. Wickersham withhold his motion long enough for Mr. O'Brien to make his statement?

Mr. Wickersham — I will.

Mr. M. J. O'Brien — I was going to say, Mr. Bayes, that it was thought by many that it is unnecessary to have a Constitutional amendment authorizing the giving to municipalities of this State the right to have restricted areas and also to regulate the heights of buildings in cities. I want to say that under the decision of the United States Supreme Court, as I read it, it is within the

police power of the State and therefore resides in the Legislature to regulate those matters. Now that we have passed the home rule bill which gives localities the right through their local legislative bodies to legislate with respect to that, and with the other provision we have put in our Constitution, the Legislature may delegate such powers to them. I trust that the motion will not prevail, although I am very much interested in it, because it can be taken care of by the Legislature.

The President — May the Chair inquire what bill is referred to?

Mr. Bayes — This relates to the amendment from the Committee on Cities to amend article 3 of the Constitution providing for restricted areas in cities and the limitation of the heights of buildings.

Mr. Reeves — May I speak a word of explanation about this?

The President — Without objection, the gentleman may proceed.

Mr. Reeves — The purpose of this amendment, if it had been possible to have reached it here, would have been to allow the Legislature to make zones and districts for residential purposes, building purposes, and fixing the height of buildings. It could not, of course, have militated against the Federal provision in so far as it prohibits the taking of private property without just compensation. Looked at, therefore, in its essential nature, it was largely for its moral effect on questions that might arise. The city of New York is already beginning to work along those lines and the opinion of those who have studied this most carefully is that it already has power and ability to do it, and that, notwithstanding the inability to get this through this Convention, the cities may go on and substantially do what this amendment was endeavoring to say in specific language they might do. So I hope that Mr. Bayes' proposition may be laid aside and that we may go on with the regular order.

Mr. Bayes — In view of the statements by Judge O'Brien and Mr. Reeves, I request to be permitted to withdraw the motion.

The President — The motion is withdrawn. The question is upon the motion made by Mr. Wickersham that the Convention go into Committee of the Whole for the consideration of the next special order, to return to the Convention immediately upon the receipt of the report of the Committee on Revision upon the bill to amend the Bill of Rights. All in favor of the motion will say Aye, contrary No. The motion is agreed to.

The Convention goes into Committee of the Whole and Mr. Delancey Nicoll will be good enough to resume the Chair. (Mr. D. Nicoll resumes the Chair.)

The Chairman — Gentlemen, the House is now in the Committee of the Whole on General Order No. 36. Mr. A. E. Smith has the floor for thirty minutes.

Mr. A. E. Smith — Mr. Chairman, I appreciate that there are some other delegates to the Convention that desire to be heard on the affirmative side of this question and I will therefore confine my remarks to as small a space of time as I can, consistent with as good an explanation as can be made of it in the time given. I desire to pass over General Order No. 36, in relation to the delegation of legislative powers, and go to the amendment of Article III in relation to living wages to be paid to women and children, General Order No. 55.

Mr. Chairman — The House has now under consideration General Order No. 36.

Mr. A. E. Smith — I move to lay it aside.

The Chairman — All in favor of the motion to lay aside General Order No. 36 will say Aye, opposed No. Carried. What is the further motion?

Mr. A. E. Smith — I desire now to discuss the next bill, General Order No. 55.

The Chairman — Mr. Smith has the floor on General Order No. 55.

Mr. A. E. Smith — Mr. Chairman, this is intended to give to the Legislature the power, either by its own action or through any properly constituted agency, to prescribe a living wage for women and children employees. In explanation of the language, first, the reason for saying that the Legislature may, is not with the intention in mind that the Legislature ever will, but in order that it may have itself, in express words, the power that it is intended it should have, to be able to delegate power to an administrative agency of its own creation. This comes to this body as a recommendation from the State Factory Investigating Commission. It was continued in 1913 after being in active operation for two years for the express purpose of investigating the question of salaries and wages paid to women and children employees in mercantile establishments and in industrial occupations. The exact wording of the report subscribed to by the majority of that Committee, and, as I understand it, by the minority representatives as well, removing it entirely from the question of politics, was, briefly, as follows: "After careful deliberation and study of the results of its investigation and the testimony taken, the Commission has come to the conclusion that the State is justified in protecting the underpaid women workers and minors in the interests of the State and society. It finds that there are thousands of women and minors employed in the industries through out the

State of New York who are receiving too low a wage to adequately maintain themselves in health and decent comfort. The Commission believes that this unjustly affects the lives and health of these underpaid workers and believes that it is opposed to the best interests and the welfare of the people of the State."

This investigation was made by employees of the Commission, women graduates of our colleges, who went among the workers in the different low-paid industries and they found there a condition unknown entirely to the people that employed these women and children. They had no opportunity for that personal contact with the employee that would put them in an intelligent position to know just what conditions these women and children were obliged to live in because of low salaries. In its operation, the minimum wage, if ever enacted by the Legislature, can never be made to apply to any class except where there are large numbers of employees. In its operation in Massachusetts it has only been applied to the so-called department stores where so many thousands of people are employed and where the employer, because of the number of people he has in his employ, is unable to have that personal contact that gives him the chance to see by the condition of these workers whether or not they are being paid a wage that is adequate to properly feed them and to properly clothe them. The evidence taken was something like this: Let me read you one or two paragraphs from the evidence: Subject: "Living on Six Dollars a Week," by Esther Packard, one of the employees of the Commission. "How do they manage to do it? In what mysterious ways do girls stretch a less than a living wage into a living one?" is the question which the public most often asks when it hears of girls living on five, six and seven dollars a week. "Miss C. W."—this is an actual conversation had with a working girl in a department store. The names are not mentioned. The initials are given and all the facts, the right names, the addresses, all the circumstances and the name of the department store are in the possession of the Factory Investigation Commission. "Miss C. W., a department store clerk answers quickly, 'When I have to pay for a pair of shoes or something like that, I don't buy meat for weeks at a time.' 'You see yourself the only thing that is left me to economize on is food,' says another department store clerk; 'I never eat any breakfast at all. By experience I found that was the easiest meal to do without.' Annie B. reasons thus: 'When I don't spend any money on pleasure and only what I absolutely need on clothes, how else can I economize except on food? What else is there to do?'" The State, not in the interest of the worker, not in the interest of the individual, or a class of individuals, but in the interest of the

State itself has undertaken to regulate this question of woman and child labor. If it is essential to fix the number of hours that they are to work and fix the time that they are to work, prevent them from working in the night time, is it not only natural to say that the State should have power to say that they shall not be worked at a salary less than sufficient to keep them in health and in decent comfort? Now, one of the arguments against the minimum wage that can be dissipated into thin air by a wave of the hand is the argument that it may some time be made to extend to men. Everybody around this chamber knows that by labor unions and by labor organizations men have it in their power, and they do to-day, exact a certain minimum wage. I had the personal experience one time as a trustee of public buildings upon the repair work on this capitol after the fire. I found that the Bricklayers' Association of this county had fixed the minimum wage for this county; that it was a different one for New York county; varying, I presume, with the cost of living or with the surrounding conditions. They had the strength and the force because of their organization to demand a minimum wage, and it is fixed, if not by law, it is so thoroughly fixed by custom, that you cannot conduct a public work or a public operation in this State without a full recognition of that fact.

Women and children have no organization. No woman goes to work, or no young girl goes to work with the intention of forever working in the department store or a shirt factory or in a shirt-waist manufactory. She goes there for a start in life. Her ultimate desire is the desire of all women, that she have her own home and her own family. Therefore, they never organize. Consequently they are without the power to present their claims, and it is proposed by this Legislature that the State itself help them to present the claim. There is an entirely erroneous idea about the operation of the living wage board. Let me give you briefly an illustration of how it works. The State authorizes a wage board for certain industries. The employer appoints a certain number of members and the employees are represented by a like number. They come together and by investigation, by communication, personal communication with the employees in the industry they find out the conditions of the employee. They consider the problem of the cost of living in the particular locality; assuming, of course, naturally, that it would be lower in Troy than it would be in New York and so forth. Not only do they consider that but by the recent decision of the Massachusetts wage board in the case of the salesgirls and saleswomen in department stores, they even considered the present business condition of the country, and upon that there is an agreement, and

the minimum wage, or living wage is then fixed. There are a great many people that say this interferes with individual bargaining and it interferes with the rights of the people. Not at all. Not at all. This is really an inhibition rather than a minimum wage. This wage board says, "You can make any bargain you will with your employer; you may make any arrangement as to salary which you please among your classes, but in the interest of the State and of society you cannot pay less than this amount for this aged girl in this part of the State. That is what it means.

Mr. Byrne — Mr. Smith, you used in the course of your remarks "minimum" and in the bill I see it is "living". Is the meaning of this that there will be a minimum wage; is that it?

Mr. A. E. Smith — No. The word "minimum" has grown into popular use in connection with this subject, because after all you say that the "minimum" wage is the "living" wage. That is really what it is. It is the lowest that can be paid to any one class of employees in a given industry in a certain locality.

Mr. Quigg — So that your wage board is going to decide for itself how much is a living wage in the different parts of the State and provide different sums according to the cost of living in the different parts of the State?

Mr. A. E. Smith — Yes.

Mr. Quigg — And, consequently, does not that dictate to every employer who gives employment to women and children what he shall pay?

Mr. A. E. Smith — Well, that is an extreme way to recite it. I would not say that that is the correct way to put it at all, because the history of the working of it has been that it has never yet been fixed except by agreement with employers. Bring it home to yourself. If you thought for a moment that there was in your employ any considerable number of persons who were unable to live upon the salary you were paying them, you would be the first one to say they should have a little more. The greatest trouble is that in large industries, where so many thousands are employed, the employer never finds it out, and it is for this purpose, as much as anything else, to let him know. I was very deeply impressed by the testimony which you will find was given by the president of the National Cloak and Suit Company, the largest employer of women and children in the State, and the very thing, the very principle that it was sought to write into this Constitution, that great company has had in operation for a long time. Not only, not only have they conceded that there was a minimum below which they should not pay anybody, but they

have felt that there rested on them some duty to continue the education of every young girl who was obliged to go to work for them. Now, what is the effect of it upon the employer? The effect is that he gets better work. Better work. Professor Brandeis, before the Committee, quoted a great English authority that a railroad costs the same per mile to complete it, whether you pay a man two cents a day or two dollars a day, and it is predicated on the reasonable and unquestionable theory that you get what you pay for; no more and no less. The man that properly pays, gets proper service, and if there be those unable to earn it, they are probably aspiring to a kind of work to which they are entirely unfitted, and the one or two or three or six or a dozen in the thousands are holding the rest back. There is another side to this, too, which deserves something of our consideration. We have spoken of what must be the natural effect upon health. The girl who is insufficiently paid, and improperly clothed will in time become a charge upon the State. About that there can be no question, and if she is to be the mother of the future citizens, look straight and deep down into your heart for a moment, and see what we are looking forward to, if the State refuses to bring them up in health and decent comfort. There is another side worthy of consideration. I will quote from a part of the testimony of one of the investigators. There is the moral side. There is the moral side. It is an awful weight! It is an awful temptation! One of the investigators went out and among the employees of the mercantile establishments and in the course of her testimony she said: "I do not think the problem ever presents itself to a girl, 'Shall I sell myself in order to make more than six dollars a week?' But the absence of amusement, the barrenness and the ugliness of life, the whole thing combined with unemployment does tend powerfully in that direction. Low wages put too severe strain on the moral strength of the individual." Now, just one word in closing. I said I wanted to give somebody else a chance. We should not hesitate to clothe our Legislature with this power. Gentlemen, will any man around this circle think for a moment that this is going to be abused, or even unwisely used? Remember what happens after very careful consideration, very careful deliberation. Just as sure as we are to leave this hall to-night, so sure is this coming in this State, and before you leave here, look into your conscience and consult your conscience and see if you are not passing by an opportunity to help it; see if you can excuse yourself at some future time, when its necessity may be much more apparent, upon the ground that you are afraid to trust this great question to the elected representatives of the people in the Senate and Assembly.

Mr. Byrne — At the present moment, in the city of New York at the Brooklyn Navy Yard a commission is taking testimony in that section in order that a proper wage may be fixed for the mechanics in the navy yard. Mr. Parsons has told me that he himself did the same thing relative to the customs service. When General Wickersham this afternoon said, that in matters of this character, namely, the striking out of the last article of the bill of rights, that that was the proper attitude to take, I think he voiced the modern thought. That is the attitude that people who labor shall be paid enough to live at least decently; that they shall have the ordinary necessities of life; and if the government has recognized this in the appointment of commissions throughout the country, why should you not place in the hands of the Legislature this power to say, "You shall not give less than this in this certain section, because it costs that much to live decently." Mr. Smith has covered this entire ground, and I do not intend to take much more of your time, gentlemen. These words, "Minimum wage" he has now explained it to me, mean, if I am correct in my understanding of what he said, that it shall be a wage which shall permit a person to live in a particular locality in a decent fashion.

Mr. A. E. Smith — Mr. Chairman, during the course of my argument I was enabled to find two newspaper clippings that I desire to call the attention of the Convention to. The city of New York recognizes eight dollars and forty cents a week for city laborers. The Standardization Bureau head says that men cannot live comfortably on less. Family of four. Study. Below eight dollars and forty cents a week, an unskilled laborer, family of five, cannot maintain a standard of living consistent with American ideas. We have the minimum wage applied to men laborers right in the city of New York and fixed by the Board of Standardization, which makes its report to the appropriating power, the Board of Estimate and Apportionment. Boston, August 5th, just a month ago. A minimum weekly wage of eight dollars and fifty cents for women over eighteen years of age, employed in department and other retail stores, is recommended in the report of a special board called "The Minimum Wage Commission" to-day. Employees within this classification shall have had one year's experience, while inexperienced female workers over eighteen years of age shall not receive less than seven dollars weekly. According to the board's findings, minors between 17 and 18 years of age are to be paid the weekly sum of eight dollars, and those under 17 years of age not less than five dollars. In the opinion of the board these rates are somewhat below the necessary requirements of living, but business conditions at the present are such as not to

permit of a higher scale. The board is composed of three representatives of the public; six representatives of the retail establishments and six employers. Showing that what I said a while ago was absolutely so, that all the conditions were taken into consideration, and that this wage-fixing proposition is not an arbitrary action by the Legislature, but it is the result of careful study and careful analysis of the situation.

Mr. Dunmore — Mr. Chairman and gentlemen of the Committee. Nobody sympathizes with people who have to work for small wages more than I do. But I think there is nobody in this Convention so foolish as to think that you can fix the price that one person shall pay to another for their labor by constitutional amendment, or by statute.

Mr. A. E. Smith — Judge, there is no such thing as that proposed by this bill, and if the Judge offers that as an argument against my proposition, he is entirely without any argument. What this simply does is to have the State of New York say that below a certain amount per week, no person can maintain themselves in decency and comfort, and that less than that shall not be paid.

Mr. Dunmore — That means just exactly what I stated.

Mr. A. E. Smith — I beg your pardon, it does no such thing.

Mr. Dunmore — If the amendment for a minimum wage is passed at a certain price per week and the employer is not willing to pay that for an employee, then he cannot have an employee in his employment. That is just what it means. Minimum wages have been fixed in years gone by, and in centuries past, but I assert that they never have fixed the price at which one person should employ another. That must be, it always has been, and it always will be a matter of supply and demand. Mr. Chairman, what does this mean? It means that if the minimum wage is fixed at eight dollars per week, or any other sum whatever it may be, any person who is unable to earn that sum is absolutely eliminated and will be unable to work for wages at all. It drives out the one-legged man. It drives out the one-armed man. It drives out those who are mentally deficient, and the person who is not able to earn the minimum wage is not to be permitted to be employed at all. Now, it is claimed that this has resulted in increasing the wages in other States. Very likely, that is true, so far as the average is concerned, but that is in this way, because it eliminates the inefficient, drives out the low-waged person, and only retains those who receive the better wages. It only retains the efficient employees. So that the effect of this statute, if there is going to be one of this kind enacted, would be to increase the pauper class, and to prohibit the person who can only partially support herself or himself from earning what he or she can, thereby

relieving the friends of that person, or the public, from their support, at least in part. It would have another effect. When business is dull, when the manufactories and the industries are unable to dispose of more than half of what would be the natural product during normal times, it has two courses to pursue. It can run on half time and retain its entire force in its employ, or it can discharge half of its force, and turn them out upon the street. Now this statute if it were enacted, would compel the employer to take the latter course. If it is fixed so that the employees must receive so much a week, or they cannot work at all, then the employer would be compelled to discharge half of his force and work the other half full time. Under the present system, by reducing the force to correspond with the amount of the product that they can dispose of, they can maintain their entire force working three or four days a week and give them something on which to maintain themselves, and upon which, by economy, they can live during the dull season. Now; there are other considerations. Take, if you please, the textile industry of this State. The manufacturing industries sell their products throughout the United States. They are in competition not only with mills in this State, but in other States, and supposing there is no minimum wage in other States, if the effect of a minimum wage law should be what its advocates claim for it, viz.: that it will increase the wages of the employees, then in that event it would put the manufacturing industries in this State in a position where they could not compete with industries in other States where they had no minimum wage law. The wages of a person cannot be determined so much by what he or she can live on as by what he or she can earn for the employer. Now, Mr. Chairman, three years ago the business conditions in this State and in this country, were the most prosperous in its history. Business was good. The manufacturing industries were running on full time. The working classes were fully employed and at more remunerative wages than at any time in the history of this country. A change was brought about by reason of the laws enacted by the State and National government and by reason of the hostility shown to business interests, there came a great, great change. Some of the factories in this State were closed. Many of them were compelled to reduce their time. There was a depression in business, and more people of the laboring class were walking the streets looking for employment after that change came and by reason of those conditions, than at any time in the history of the State.

After a time they realized — the people generally realized, and the working classes realized that a mistake had been made in these laws that were being enacted, and in the agitation that was

continually going on, adverse to the business interests of the State. As a result last fall the verdict which had been for several years rendered at the polls was reversed by a very large majority and the understanding was that the party was to be returned and was returned to power in the State that was in power when it was so prosperous four years ago; and a majority of the delegates to this Convention were sent here for the very purpose of restoring, as far as they could, by their action, the conditions existing during those prosperous times. Now, what is proposed to be done? Instead of that, it is proposed, if this amendment can be carried, to enact a Constitutional Amendment which will give the Legislature greater power to harass, to heckle, to annoy business interests, and to drive industries out of the State. I want to say to you that a number of the manufacturing industries, giving employment to labor at good wages, have been driven out of the State, and many of them have closed their doors, and the proprietor of one of the large mills in Utica that closed its doors nearly two years ago — a mill that had run successfully for seventy-five years — told me that that mill would never be opened or a wheel turned in that mill again until conditions were changed. Now, Mr. Chairman, it is not in the interests of the laboring classes that this sort of thing should be. There are upwards of 45,000 manufacturing industries in this State. Those manufactories have invested in their business nearly three billions of dollars. During those prosperous years that I mentioned they were giving employment to nearly 1,200,000 people, and they were paying out annually to their employees upwards of seven hundred and fifty millions of dollars. From some of the things that have been said by delegates in this Convention, you would think that these manufacturing industries were enemies of the people and that they ought to be driven out of the State. I would like to say to some of those gentlemen, if you succeed in closing the doors of those manufacturing establishments or in driving them out of the State, to whom will this nearly twelve hundred thousand employees look for the payrolls of seven hundred fifty millions of dollars that now is paid to them annually? I want to say to you that there is no agency that has been so potential in building up the cities and villages of this State as those manufacturing industries. There has been no agency so potential in making this the most advanced and most progressive, the most prosperous, and in all respects the greatest State in the Union as these manufacturing industries. Mr. Chairman, it is the payroll of the factories which enables the workingman to pay his butcher, grocer and other household expenses.

The Chairman — The gentleman's time has expired under the ten minute rule.

Mr. Dunmore — Mr. Chairman, I would like to at least finish my sentence, if I may be permitted.

The Chairman — The gentleman will proceed.

Mr. Dunmore — Mr. Chairman, it is the payroll of the factories that enducates the children and that clothes the children of the workingman. It is the payroll of the factories that enables him to pay for his home, and that maintains the value of real estate.

Mr. Byrne — Judge Dunmore, do you believe in paying women and children workers a wage which will permit them to live at least decently in the community in which they reside?

Mr. Dunmore — I believe that the women and children should be paid all they earn, but you cannot by constitutional amendment, or by statute, make anybody pay any more than they earn, and if the cannot earn the minimum wage, it means that they cannot be employed.

Mr. A. E. Smith — At the time that the Fifty-four Hour Bill was pending in this House and in the Senate, the fifty-four hours per week bill for women and children, it was predicted here by men claimed to be the most competent authorities in the State that half of the textile industries of Utica and of Oneida, New York, would move over into Connecticut, and the bill was passed and became a law. How many moved away?

Mr. Dunmore — Two or three went into bankruptcy, a like number went out of business and about the same number moved away.

Mr. Donnelly — This matter has been treated by the previous speaker upon a pure basis of economics, and from the standpoint of the prevention of immorality. I believe that there is another side to this question, a side which is founded in justice and is founded upon a proposition of merit and one that can be sustained by revelation, by the theologians of the world, and by all the great thinkers of this and other countries. Among the great writers in this country and other countries of the Protestant denomination, who have spoken upon the subject, and who have written upon the subject, are Kingsley, Maurice, Hughes and Headlam in England; Pastors Stocker and Todt in Germany; Gide and Waddington in France; and Bishop Potter and Dr. Gladden in the United States. Among the great writers of the Catholic Church who have discussed and written on this subject is Pope Leo XIII, who was one of the great thinkers of the nineteenth century and has been classed with Bismarck and Gladstone, two very great thinkers in that period of European history. In addition to his thought and expression of opinion upon this subject of a living wage, we have such men as Ketteler in Germany, Vogelsang in Austria, de Pascal in France, Pottier in

Belgium and Manning in England, declaring for the justice and fairness of the living wage. This question is treated here by some as though it was a matter which was purely accidental; as though it was entirely a new question; as though it had no relation to morality, or justice, or fair distribution to a human being of the products of labor which he gives towards the development of the commerce and industry of the country and toward making useful the capital of which Judge Dunmore speaks. Now, Pope Leo XIII, in his famous encyclical on the condition of labor, had this to say upon the subject: "Let it be granted, then, that as a rule workman and employer should make agreements, and in particular should freely agree as to wages; nevertheless there is a dictate of nature more imperious and more ancient than any bargain between man and man that the remuneration must be enough to support the wage earner in reasonable and frugal comfort. If through necessity or fear of a worse evil, the workman accepts harder conditions because an employer or contractor will give him no better, he is the victim of fraud and injustice." In the year 1906, Dr. Ryan, a professor in a seminary of the West, wrote a book entitled "A Living Wage", which I have in my hand, and in a review of that book, which was made by a writer for the New York Times, he had this to say, and I address myself most earnestly to the members of this Convention on the thought here expressed by this writer. It has been declared here, in offhand discussion by members of this Convention that this was a socialistic proposition; that it was a materialistic proposition. I ask the members to listen to what this thinker says in analyzing the argument set out in this book which I have just referred to. After summarizing and analyzing this book, he says: "This inadequate summary of an interesting argument will do good if it attracts attention to what it is a pity cannot be called a Christian theory of wages. It is more properly to be called a Roman Catholic system of political economy, although we are only able to allude approvingly to the cogent citations from the Fathers which show that they long ago had well considered a topic which may yet become burning with us, and mark you the words 'as an alternative to socialism, as an antidote to anarchism, as a stimulator to thought,' the book seems to us well subscribed in Dr. Ely's words — 'a meritorious performance.'" And, I say to you, that if you are ever going to prevent socialism in this country; if you are ever going to satisfy the great bulk of the population, the workers, you are going to pay to them enough to keep starvation from the door, by giving them a living wage. The theory of unlimited bargaining, and that is a false economy, just brought up by Judge Dunmore, is something which latter day thinkers and

writers are not going to consider or accept. It is fair, it is founded in justice, that labor should have enough of the product of its toil to live on in comfort and to support the family. A great number of men have worked out at various times tables showing how much ought to be paid to a worker to sustain himself and his family throughout a year. John Mitchell, in a tabulation referred to in this book, placed it as something like $600 a year. The Commissioner of Labor of the United States placed it as something like $600 a year; but in the advance in the cost of living which has gone on in the years since these tabulations were made, the figure of $800, or the total of $800 a year, has been arrived at by the Bureau of Municipal Research in the City of New York, in a tabulation made a short time ago and already referred to by Mr. Smith. Now, in answer to this argument, which was made by Judge Dunmore, I hold in my hand a book written by an English writer which refers to the situation there and speaks of the researches made on the subject by Sir C. Booth and Mr. Rowntree, who have devoted a great deal of time, study and consideration to this topic, and he says upon this subject; "The researches of Sir C. Booth and Mr. Rowntree tend to prove that nearly 12,000,000 of our population are just on or below the level of a bare subsistence. In other words, these millions of the destitute are the victims of injustice, being deprived, by the iniquities of the social system of their God-given rights to a life befitting a human person. Are the resources of the nation abundant enough to secure a comfortable livelihood for all? There can be no doubt on that point. Mr. J. A. Hobson, working from an estimated population as of 1895 of 38,000,000, showed that 11,000,000 of the wealthy classes were receiving more than half as much again as the 27,000,000 wage-earners. This disproportion of the shares is more glaring at the present date." It seems to me a similar array of statistics might be given to Judge Dunmore's argument to show how unfair and unsubstantial that argument is. Now, there have been many remedies sought for this situation, but it seems to me that this proposition of giving a living wage is the best solution of the difficulty. I admit that at the present time it is a thing that is impossible of putting into force, but I do say that the Legislature of this great State should have the power on the subject. Already we have in municipal contracts the prevailing rate of wages which is paid by the municipal contractors and contractors with the State and there is no difficulty about that; and we already know that the prevailing rate of wages as it is maintained in various classes of industries and in certain manufactories is a living wage, and there is no reason why the same principle applying to municipal contracts

cannot be fairly left to the discretion of the Legislature to be enforced in this State as to all classes of workers. It will wipe out this unlimited bargaining which is so unjust, and it will put all competitors in the various branches of industry and commerce upon a level plane, because when one man is required by law to pay his proportionate wage as his fellow competitor is, it follows that he is in the same position to market his product and get a fair profit out of it.

The Chairman — The gentleman's time has expired. Are there any other gentlemen who desire to debate this amendment?

Mr. Curran — I had no intention of taking any part in the controversy here, on account of the matter being so ably and fully presented by the introducer of the proposed amendment, but after listening to Judge Dunmore, and after thinking over my own practical experience in arranging for conferences whereby the minimum wage and so forth had been brought under consideration, I am satisfied in my own mind, and from my own experience, that Judge Dunmore has gone a little too far. I have, I believe, within the last twenty years attended no doubt one or two conferences each year with employers relative to hours and the wage question, and I found in the beginning that the argument used by Judge Dunmore here was the argument always used by the employer. That is, deprives the good man of receiving what he is worth. That is absolutely untrue. They say, many times, there are many men who are employed, or women, whoever they may be, who are employed, who would not be employed provided you permit a minimum wage, or a living wage. We found out after practical experience that when you create a minimum wage rate, that rate, in most instances, becomes a maximum — in most instances it becomes a maximum. In any kind of an industry the poor man must be employed just as well as the good man, and if the poor fellow wasn't of any use, then he wouldn't last long enough to know he was in the shop. I have been in the shop and talked with the employer and we have talked together, and they have mentioned these things to me. While you are creating a minimum wage, and when I am talking about a minimum wage, I mean a minimum wage rate, and when you are talking about a minimum wage rate, you have got to figure at least a minimum wage for the people whom you are doing business with. In the foundry industry, with which I am more familiar than some of the other industries, I have found that sometimes it has been pretty hard to bring the men to realize that it would be necessary to establish such conditions for their own benefit. Some men will receive $4 or $4.50 or $3, or $2.50 a day, and you create a minimum wage rate, nine times out of ten if the minimum is fixed

it becomes a maximum. If one employees leave one shop where he receives $4 a day and makes application for work with another employer where the minimum rate is $3.50, he does not ask any questions. He knows he is going to get $3.50 a day, although being a $4 or a $4.50 man in that other shop. The employer should pay him $4 a day, but such is not the case, no matter how good a mechanic he is. He may, in the course of time, receive a little increase in wages. About discharging the men who are not able to earn that minimum wage, that fixes itself. I would like Judge Dunmore, if he can, to give me the name of any industry, no matter what it may be, where there is a minimum wage rate created whereby men are dismissed under the condition that they cannot earn that minimum wage. I have never seen it. It is the easiest thing, after an agreement is made, that you should delegate the power to the Legislature, to give them opportunity to make further investigation to agree that a certain industry, whether it is the cloak industry, or whatever it may be, that that minimum wage rate may continue through that entire industry. The only trouble is where there is unequal competition. If you create it in one industry, and create a minimum wage rate in another, and they were both competing for business, then it would be unjust unless you made it equal. Nobody would be injured where it is equal, because the Legislature, after making their investigation, surely will give that thorough consideration. I know many times things have had to be done that made the men think not very kindly of the employer, but, realizing that I was representing the men, I thought the best thing was to do it so as not to make difficulties, and the men are satisfied. Every year we get fair treatment and an increase in wages. But, with the minimum wage rate, as soon as you get the minimum wage rate established, I don't think you will have anything to fear. And as far as a man being dismissed, the men are dismissed to-day if they are unable to earn the wages they get. There is no business that maintains men not able to maintain themselves, and produce equal to the amount of wages they are paid. Nobody has shown me any industry that is keeping cripples employed or men that are unable to work. I would like to have somebody show me that industry. I realize that there are men, employers, that have the heart many times to continue men on the payroll that cannot do a day's work that other men do for the same amount of wages; there are many of them. But there are others that do not allow them to remain five minutes. If they cannot produce the work they are dismissed. Now, I don't think you would be doing an injustice even to the employer, provided you pass this bill. I can see nothing but good in it from my experience, and I trust that consideration will be given. I believe they are justly entitled to it.

The Chairman — Any other gentlemen desire to debate? If not —

Mr. Marshall — It is not my desire to discuss this question, which is of great importance, at any length, especially at this late hour. I wish to say in advance that there is nobody who has a greater sympathy for the lot of the wage-earner than I have, and I can point with some satisfaction to the fact that at the time of the great cloakmakers' strike, which occurred in 1910, when 70,000 people were on strike, I was chosen by both contending parties as the mediator, and succeeded in promulgating in the shape it was finally adopted, the well-known protocol according to which the business was conducted for five years, with peace and harmony and recently renewed with some slight changes. That experience satisfied me that there was no necessity for the State to interfere in the affairs of the employer and the laborer; that there was no occasion for the exercise of State paternalism, but rather that such interference was certain to injure not only the employer, but also the employee, and especially the latter.

Mr. Parsons — Was not that a case where the employees were organized?

Mr. Marshall — Some were organized and a large proportion of them were not organized.

Mr. Parsons — Well, who struck, who were the strikers?

Mr. Marshall — Men connected with the trade organizations, and those in sympathy with them.

Mr. Parsons — And did not those who represented the organizations lead the fight and bring about on the employees' side, so far as the employees' side was concerned, the agreement with the employer?

Mr. Marshall — They had much to do with it. Of course, they were parties to the arrangement, to the bargaining. Nobody is suggesting for a moment that the employee should not have the right to unite and to bargain with the employer.

Mr. Parsons — Is it not so that bargaining between the employer and employee can only take place where the employees are organized?

Mr. Marshall — There is no difficulty in that, as to their organizing, the law permits it and encourages them, and the decisions of the courts permit that to be done without let or hindrance. The question we have before us, I think, is not a question of organization, but a question as to whether or not a State should interfere and make terms. Not only make terms, but the fixing a price for labor. It is the provision that the Legislature may directly, or through any duly constituted administrative agency, prescribe the living wage, the minimum wage that would be paid

to women and children employees. In other words, the State is to fix the compensation which is to be given to the employees. Now, it is, to my mind, absolutely impossible to make such a provision as that, even if it were desirable to have the State create a price for labor or to fix the amount which is to be paid for any commodity, whether it be labor or anything else.

Mr. A. E. Smith — The Minimum Wage Law does not attempt to fix the price of labor in any way.

Mr. Marshall — It necessarily must fix the price of labor. You say a "minimum wage," or a "living wage"— it must be a wage to an amount which is prescribed according to your amendment, by the Legislature, or by the duly constituted administrative agency that the Legislature or that agency must decide what in its mind is a living wage, and that, therefore, fixes by act of the Legislature, or by act of administrative board, the price which is to be paid for labor. Now, you can call it what you please, but in the final analysis, that is precisely what it amount to. For instance, if the Legislature should say that the minimum living wage, or the living wage that should be prescribed for any class of labor, should be $20 a week, why, that would be fixing the price of labor by the Legislature. The Legislature says $20 is the living wage; therefore, by act of the Legislature, it is attempted to fix the price of labor at $20 a week.

Mr. A. E. Smith — Mr. Chairman, I desire to say to the gentleman that that is not the fact, and that is not the way it operates in the States where it has been enforced. It means just this, that is a minimum below which you cannot go.

Mr. Marshall — Certainly. But suppose that minimum is $20, and you say you shall not employ anybody for less than $20 and the employer says he cannot pay $20, you, nevertheless, irrespective of his wishes in the matter, are seeking to fix the amount below which it is illegal to reduce the wages, at $20 a week. That is the effect of it.

Mr. A. E. Smith — Mr. Chairman, let me say to the gentleman that is the extreme position to take. What really happens is that it is by agreement with the employer.

Mr. Marshall — There is nothing in the law now to prevent agreement with the employer. All wages are fixed by agreement with the employer, either expressed or implied. The employer says, "I will pay that much," or the laborer says, "I will take that amount," or the laborer says, "I must have so much," and the employer says, "I will pay you that," or, if they don't agree on either, they agree on some figure between the two amounts.

Mr. Wickersham — Mr. Chairman, will you excuse me a moment if I say to the gentleman that the time is approaching

when we must rise and ask leave to sit again, shall we say for fifteen minutes more?

The Chairman — It is moved that we do rise and ask leave to sit again. Those in favor will say Aye, contrary-minded No. It is carried.

(The President resumes the Chair.)

Mr. D. Nicoll — The Committee of the Whole has had under discussion General Order No. 55. Motion has been made to finish the consideration of it; and the Committee rises and asks leave to sit again until the arrival of the report of the Committee on Revision on the Bill of Rights.

The President — The question is upon granting permission to the Committee of the Whole to sit again upon the bill, General Order No. 55, until the arrival from the Committee on Revision of the revised print of the report of the amendment to the Bill of Rights. All in favor of granting leave will say Aye, contrary No. The Ayes have it and the leave is granted.

Mr. Wickersham — Mr. President, I understand the report from the Committee on Revision is here. If so, I will ask its consideration before going back into Committee of the Whole. The motion having been carried that we go back into Committee of the Whole, and as the Bill of Rights revision is not here yet, I move that we go back into Committee of the Whole.

The President — The Convention will go back into Committee of the Whole, and Mr. D. Nicoll will oblige again.

(Mr. Nicoll resumes the Chair.)

The Chairman — The Committee has under consideration General Order No. 55.

Mr. Marshall — Mr. Chairman, I was about to say that you can no more fix the minimum wage by act of Legislature than you can make a greenback worth a hundred cents in gold, or than you can make a barrel of apples worth ten dollars when they are in fact only worth two or three dollars. In other words, legislation cannot fix the value of services. In a famous opinion of Mr. Justice Holmes of the Supreme Court of the United States, he said that Herbert Spencer's social statics were not a part of the Constitution of the United States, and I will say that Herbert Parsons' theory of sociology should not be made a part of the Constitution of the State of New York. Now, let me show you how the wheel of time revolves and how situations reverse themselves in the different ages. In the days of Edward III the attempt was made by act of Parliament to fix the maximum wage of a laborer; to fix the price on every product of human industry. It did not work; such legislation never will work. The law of supply and demand controls, irrespective of acts of Parliament.

Let me read for the instruction of the Convention a few pages on this subject: "The several *Statutes of Labourers,* enacted in the reign of Edward III and for several centuries thereafter, among other things compelled every person, under penalty of imprisonment, to serve him that doth require him. They restricted the wages that were to be paid to servants, artificers and workmen. They fixed the prices at which victuals were to be sold. They limited the compensation of labourers in husbandry, and the going and coming of farm servants. They declared that cordwainers and shoemakers 'shall not sell boots nor shoes, nor none other thing touching their mystery, in any other manner than they were wont' to sell them in 1345, 'and that goldsmiths, saddlers, horsesmiths, spurriers, tanners, curriers, tanners of leather, taylors, and other workmen, artificers and labourers, and all other servants here not specified, shall be sworn before the justices, to do and use their crafts and offices in the manner as they were wont to do the said XX. year (prior to 1365), and in the time before, without refusing the same because of this ordinance. And if any of the said servants, labourers, workmen or artificers, after such oath made, come against this ordinance he shall be punished by fine and ransom, and imprisonment after the discretion of the justices.' The several prices at which poultry might be sold were likewise fixed by statute. Handicraftsmen were prohibited from using 'but one mystery.' Merchants were forbidden 'to use more than one sort of merchandise.' It was enacted that 'no goldsmith making white vessel shall meddle with gilding, nor they that do gild shall meddle to make white vessel.' The diet and apparel of servants was prescribed. The cloth of which their garments were made it was declared 'shall not exceed two marks, and that they wear no cloth of higher price, of their buying, nor otherwise, nor nothing of gold nor silver embroidered, aimeled, nor of silk, nor nothing pertaining to the said things. And their wives, daughters, and children of the same condition in their clothing and apparel, and they shall wear no veils passing xii. d. a veil.'"

Mr. Barnes — I rise to a point of order.

The Chairman — The gentleman will state his point of order.

Mr. Barnes — Was not a vote to be taken on this measure at 6:15?

The Chairman — As I understand it, the House just passed a resolution continuing the discussion until the arrival of the report of the Committee on Revision, on General Order No. 63.

Mr. Barnes — My point of order is not well taken?

The Chairman — The gentleman's point of order is not well taken.

Mr. Barnes — Then I rise to a question of information. I

should like to know whether it is the intention that this bill is to be "snuffed" out without a vote by having to rise to vote on this other measure.

The Chairman — I don't know what your intentions are on the subject.

Mr. Barnes — If Mr. Marshall will yield, I think this matter should never be left in the condition it is apparently to be left in if you —

The Chairman — The gentleman from Albany is out of order. Mr. Marshall has the floor.

Mr. Byrne — About that same time laws were passed regulating the length of the sword, the height of the heels, the length of the plume and the hat. All those things were passed about that time.

Mr. Marshall — Exactly. You are getting back to it now on the other side of the question by constitutional provision.

Mr. Wagner — I want to raise a point of order and I hesitate to do it because I do not like to interrupt any one speaking, but I want to prevent the happening of what Mr. Barnes predicted a moment ago, that we should talk on this thing so long that a vote will not be taken on it. Mr. Marshall has exceeded ten minutes. I raise the point of order that his time has expired.

The Chairman — Mr. Marshall has exceeded ten minutes. Mr. Marshall cannot proceed except by unanimous consent.

Mr. Marshall — I have nothing more to say. The bills are here,

Mr. Parsons — I wish to explain the situation legally so far as this proposition is concerned. I ask for order.

Mr. Quigg — I raise a point of order.

The Chairman — Mr. Quigg raises a point of order. The gentleman from Columbia will state his point of order.

Mr. Quigg— My point of order is that the Committee on Revision has the bill here and that our time was limited for discussion to the presence of the Committee on Revision with its report.

The Chairman — The point of order is well taken.

Mr. Wagner — I ask that we vote upon the question.

Mr. Wickersham — I move that the Committee do now rise, report progress and ask leave to sit again.

The Chairman — The gentleman from New York, Mr. Wickersham.

Mr. Wagner — Mr. Chairman, I would like to raise this point of order —

The Chairman — The Chair will say to the gentleman from New York, Mr. Wagner, that we are acting under a resolution of the Convention which requires us to terminate or temporarily suspend this discussion upon the arrival of the report of the Committee on Revision on General Order No. 63.

Mr. A. E. Smith — Mr. Chairman, I move that we now report this bill favorably to the Convention.

Mr. Wickersham — Point of order. There is no motion in order now but the motion to rise and report progress.

The Chairman — That is all.

Mr. Wagner — Mr. Chairman, I don't want to declare this to be disgraceful, but it is on the verge of it. This lengthy talking is for the purpose of preventing a vote upon this proposal.

The Chairman — The gentleman is losing the opportunity to have a vote upon it.

Mr. Wagner — Let us not in the closing days do a cowardly act, but let us manfully face this proposition. That is my position. I appeal to the delegates —

The Chairman — The Committee will come to order. All in favor of the motion of Mr. Wickersham that the Committee do now rise, report progress and ask leave to sit again will say Aye, all opposed No. The motion is carried.

(The President resumes the Chair.)

The President — The Convention will come to order.

Mr. D. Nicoll — The Committee of the Whole began consideration of General Order No. 36, but a motion was made by its sponsor to substitute General Order No. 55. The Committee thereupon considered General Order No. 55, but had not finished its consideration of the same when the Committee on Revision reported General Order No. 63. Under a resolution of the Convention the session of the Committee was temporarily suspended upon the coming in of that report, and it was unable to come to a vote on General Order No. 55 and instructs me so to report to the Convention.

The President — The Convention is now in the order of third reading. The Secretary will read the title of the only remaining bill in that order.

Mr. Rodenbeck — The Committee on Revision and Engrossment presents the following report.

The Secretary — Mr. Rodenbeck from the Committee on Revision and Engrossment, to which was referred proposed constitutional amendment introduced by the Committee on Bill of Rights, No. 870, introductory No. 720, to amend Sections 6 and 7 of Article I of the Constitution, generally, reports the same as examined, found correct and properly engrossed.

The President — All in favor of agreeing to the report will say Aye, contrary No. The report is agreed to. The Secretary will read the title.

The Secretary — No. 870, by the Committee on Bill of Rights: To amend Sections 6 and 7 of Article I of the Constitution, generally.

The President — The bill is now open for debate under the rule. There being no debate, the Secretary will read the text.

The Secretary — The Delegates of the People of the State of New York, in Convention assembled, do propose as follows: Section 1, Section 2, Section 3.

Mr. Wickersham — Mr. President, this bill was so fully debated this afternoon that I do not suppose there is any further debate desired upon it. I suggest that the roll be called.

The President — The Secretary will call the roll. All who are in favor of the adoption of the proposed amendment will say Aye as their names are called, and all who are opposed will say No.

Those who voted in the affirmative were: Messrs. Adams, Aiken, Allen, E. C., Angell, Austin, Baldwin, Bannister, Barnes, Barrett, Baumes, Bayes, Beach, Bell, Berri, Betts, Blauvelt, Brackett, Bunce, Burkan, Buxbaum, Byrne, Clearwater, Clinton, Cobb, Coles, Cullinan, Daly, Dennis, Devo, Dick, Donnelly, Donovan, Doughty, Dow, Dunlap, Dunmore, Eppig, Fancher, Fobes, Foley, Ford, Franchot, Gladding, Green, Greff, Haffen, Hale, Harawitz, Heaton, Johnson, Kirby, Kirk, Landreth, Latson, Law, Leggett, Lennox, Lincoln, Linde, Lindsay, Low, McKean, McKinney, Mandeville, Mann, Martin, F., Martin, L. M., Marshall, Mathewson, Mealy, Meigs, Mereness, Nicoll, C., Nicoll, D., Nixon, Nye, O'Brian, J. L., O'Brien, M. J., Olcott, Ostrander, Owen, Parsons, Pelletreau, Phillips, J. S., Potter, Quigg, Reeves, Rhees, Rodenbeck, Rosch, Ryan, Ryder, Sanders, Sargent, Saxe, J. G., Saxe, M., Schoonhut, Sears, Sharpe, Sheehan, Shipman, Smith, A. E., Smith, E. N., Smith, R. B., Standart, Steinbrink, Stimson, Stowell, Tierney, Tuck, Unger, Vanderlyn, Van Ness, Wafer, Wagner, Ward, Waterman, Webber, C A., Weber, R. E., Weed, Westwood, Whipple, White, C. J., Wickersham, Wiggins, Williams, Winslow, Wood, Young, C. H., President — 130.

Those who voted in the negative were: Messrs. Bockes, Dahm, O'Connor — 3.

When Mr. O'Connor's name was called he said: Mr. President, I want to be excused long enough to make a statement. Labor asked but one concession when appearing before the Bill of Rights Committee. They asked that the lines 5, 6 and 7, of page 1, be inserted in the Constitution: "nor shall any military tribunal exercise any jurisdiction over a civilian while the regularly constituted State courts are open to administer justice". We asked that that be inserted in the new Constitution, that the workmen of this State may have a proper opportunity to defend their rights. The Convention has seen fit, in their wisdom, in one hour to extol the courts, everything should be referred to the courts, but when it came to labor, they were not willing to say to the labor men in an industrial dispute that they should have a hear-

ing before a court instead of a military tribunal. I am of the opinion, Mr. President and fellow delegates, that next November when this proposition is before the working people of this State, the few lines that you have cut out will have a serious effect on the passage of this Constitution. I wish to vote No.

When Mr. Wiggins' name was called he said: I ask to be excused from voting and will briefly state my reasons. The subject of conservation and stream control is one of supreme importance to the people of the State and the industrial and agricultural interests of the State and it is with much regret that I find that the Committee has been unable to report a comprehensive plan having that in mind. Mr. Baldwin at the opening of the session introduced an amendment for the purpose of regulating stream control and the construction of reservoirs and the holding back of surplus waters of the State so that they might be used in time of drought, following out the suggestion made by Mr. E. N. Smith in the very able address which he made on the subject of conservation. It is with much regret that I find that the Bill of Rights Committee has been unable to incorporate a proper provision in this clause of the Bill of Rights, having that in mind. Notwithstanding that, I think there is a great deal of merit in the measure, and, therefore, I withdraw my request and vote Aye.

When Mr. Buxbaum's name was called he said: Mr. President, I had hoped that this Convention would put an end to the scandalous practice of arrests in civil cases and was gratified to see that my Proposed Amendment was in part recommended by the Committee on Bill of Rights. The hasty consideration of this article during the closing hours of the Convention is responsible that this desirable recommendation was not approved. The provisions in question were rejected, I believe, because of lack of time to carefully consider them. I trust that the gentlemen who urge that this matter can be taken care of by the Legislature are right and that the Legislature will duly consider the matter and not assume that the amendment was rejected because of inherent defects or because it was wrong in principle. I vote Aye.

When Mr. Dahm's name was called he said: Mr. President, I desire to be excused long enough to explain my position. I have faithfully attended to my duties as a delegate to the Constitutional Convention; I have voted for those measures that I believed to be for the benefit of the State; I have voted against those measures that I believed to be detrimental to the State. I find myself in the position to-day, in the closing hours of the session, where I had believed the Convention would close up its sessions with a punch that would put life into the amendments proposed. I had hoped that this Convention would send forth to the people

something that they could support. I find now at the close of the session, and am firmly of the belief, that this day's session has put the death blow to the deliberations of this body. I confidently expect to return here in 1918. I do not expect to see so many of my colleagues from the legal fraternity at the next Constitutional Convention. I therefore vote No.

The President — The vote upon this Proposed Amendment stands 130 in the affirmative and three in the negative. The Proposed Amendment, having received the affirmative vote of a majority of all the delegates elected to the Convention, is adopted.

Mr. Barnes — I move that the Committee of the Whole be discharged from further consideration of General Order No. 55, introduced by Mr. A. E. Smith, that it be recommitted to the Committee on Industrial Interests and Relations with instructions to strike out the enacting clause.

Mr. Parsons — I move to lay that motion on the table.

The President — The question is upon the motion to lay upon the table.

Mr. Wagner — I raise the point of order that the motion of Mr. Barnes is out of order and I desire that we go into Committee of the Whole at once as was provided by the report of the Committee of the Whole, which was adopted.

The President — The motion is to lay upon the table the motion of Mr. Barnes, for the discharge of the Committee —

Mr. Wagner — Mr. President, has the Chair made any disposition of my point of order?

The President — Mr. Wagner's idea of what the Convention did does not accord with the recollection of the Chair. There was no provision in the Committee of the Whole as to going back into the Committee of the Whole after the third reading of this bill as the Chair understands it.

Mr. Wagner — Mr. President, the Chair did not understand my point of order. I did not make myself clear, apparently. I raised the point of order that the motion made by Mr. Barnes was not now in order. I only raised the point of order because his motion, or at least the motion of Mr. Parsons which followed it, would not be a vote upon the merits of this proposal, and that is what we are contesting for, a vote upon the merits of the proposition.

Mr. Parsons — I make the point of order that Mr. Wagner cannot make a point of order on Mr. Barnes' motion after I have moved to lay it on the table. It is too late.

Mr. A. E. Smith — A question of information. Is the motion by Congressman Parsons to lay on the table debatable?

The President — It is not. The Chair will pass on the point of order raised by Mr. Wagner, that the motion to discharge the

Committee of the Whole from consideration of General Order No. 55 is not now in order; that the Convention is now in the order of third reading and no motion to discharge the Committee of the Whole can be made at this time, except by unanimous consent.

Mr. A. E. Smith — Do I understand that the report made by the Chairman of the Committee of the Whole to the Convention, which was adopted by the Convention, provided for the Convention going again into Committee of the Whole for the purpose of voting on this bill?

The President — The Chair did not so understand the report.

Mr. Barnes — Do I understand the Chair to rule that we are in the order of third reading?

The President — Yes.

Mr. Barnes — Are there any bills on the order of third reading?

The President — There are not.

Mr. Barnes — Then we must be out of the order of third reading.

Mr. A. E. Smith — Mr. President, I move that we go into Committee of the Whole.

Mr. Wickersham — Mr. President, I move that we adjourn. I believe that motion is always in order.

Mr. A. E. Smith — I made the motion first to go into Committee of the Whole.

The President — Yes, but the Chair has ruled that Mr. Barnes' motion to discharge the Committee of the Whole from consideration of No. 55 was not in order. The Convention is in order of third reading and is not in the order of notices, motions and resolutions, and this motion cannot be made unless we are in that order, except by unanimous consent. Therefore, Mr. Barnes' motion falls. Mr. Parsons' motion to lie on the table falls and Mr. Wickersham has moved that the Convention adjourn. It is now less than one minute of the time of adjournment fixed by resolution of the Convention. If any motion is put, it must be Mr. Wickersham's, for that takes precedence of a motion to go into Committee of the Whole.

Mr. Wagner — Mr. President, I move to amend the motion of Mr. Wickersham, that we adjourn at 8 o'clock.

The President — That motion, being a simple motion to adjourn, is not amendable because the time has already been fixed.

Mr. Brackett — Mr. President, is the motion now to adjourn *sine die?*

The President — No, the motion is to adjourn for the day and that motion is not amendable.

Mr. Wagner — The motion to adjourn made by Mr. Wickersham is a motion to adjourn to a fixed time.

The President — Mr. Wagner is mistaken. Mr. Wickersham's motion was to adjourn, and that is not amendable, and it is not debatable. All in favor of the motion to adjourn will say Aye, contrary No. The motion appears to be carried. It is carried, and the Convention stands adjourned, under the former order of the Convention, until 8 o'clock in the evening of Thursday next.

Whereupon, at 7:00 p. m., the Convention adjourned to meet at 8:00 p. m. Thursday, September 9, 1915.

THURSDAY, SEPTEMBER 9, 1915

The President — The Convention will please be in order. Prayer will be offered by the Rev. J. Addison Jones.

The Rev. Mr. Jones — Let us pray. Almighty God, Our Heavenly Father, Thou hast watched over our going out and our coming in. In labor and in rest, in business and in pleasure Thou hast attended us with Thy gracious favor. If we have passed through unseen dangers in safety, it is because Thou hast been our protection. If we have been preserved in health, it is because of Thy goodness. If we have been healed of our self-despisings, it is because of Thy forgiving grace. And for Thy manifold mercies we would bring to Thee our heart's tribute of grateful praise. Especially we would render Thee thanks for Thy goodness to Thy servant, the member of this Convention who has been passing through a critical experience; we rejoice in the progress towards recovery, and we ask that Thou wilt bless all means so that he may restored to fullness of health and strength and may serve the State and the Nation through the remaining years of a useful and honorable life. And now we invoke for Thy servants here assembled the spirit of wisdom and understanding, of counsel and of knowledge, that they may bring the work of the past months to a fitting conclusion, and grant, we beseech Thee, that in their deliberations and enactments, the cause of liberty and justice may be established upon the firmest and safest foundations. And may they have in their hearts those abiding satisfactions which come to men who have done their work well and worthily. Grant this for Thy Name's sake. Amen.

The President — Are there any amendments to be proposed to the Journal as printed and distributed? There being no amendments the Journal stands approved as printed.

Mr. Wickersham — I suggest the absence of a quorum and ask that the roll be called.

The President — The Secretary will call the roll.

Upon the call of the roll the following delegates responded:

Messrs. Adams, Ahearn, Aiken, Allen, F. C., Angell, Austin, Baldwin, Bannister, Barnes, Barrett, Bayes, Beach, Bell, Bernstein, Berri, Betts, Blauvelt, Bockes, Brenner, Bunce, Burkan, Byrne, Clearwater, Clinton, Cobb, Coles, Cullinan, Curran, Dahm, Daly, Dennis, Deyo, Dick, Donnelly, Donovan, Doughty, Dunmore, Dykman, Endres, Eppig, Fancher, Fobes, Foley, Ford, Franchot, Frank, Gladding, Green, Greff, Griffin, Haffen, Hale, Heaton, Heyman, Jones, Kirby, Kirk, Landreth, Latson, Leary, Leggett, Lennox, Lincoln, Linde, Lindsay, Low, McKean, McKinney, McLean, Mandeville, Martin, F., Martin, L. M., Marshall, Mathewson, Mealy, Meigs, Mereness, Nicoll, D., Nixon, O'Brian, J. L., O'Brien, M. J., O'Connor, Olcott, Ostrander, Parker, Parsons, Pelletreau, Phillips, S. K., Quigg, Reeves, Rhees, Richards, Rodenbeck, Rosch, Ryan, Ryder, Sanders, Sargent, Saxe, J. G., Saxe, M., Schoonhut, Schurman, Sears, Sharpe, Sheehan, Slevin, Smith, A. E., Smith, E. N., Smith, R. B., Smith, T. F., Standart, Steinbrink, Stimson, Stowell, Tuck, Unger, Vanderlyn, Van Ness, Wadsworth, Ward, Waterman, Webber, C. A., Weed, Westwood, Whipple, White, C. J., Wickersham, Wiggins, Williams, Winslow, Wood, Young, C. H., Young, F. L., President.

Mr. Bell — Mr. President, Mr. C. Nicoll sent me a telegram asking unanimous consent that he be excused this evening on account of an important engagement.

Mr. Parsons — Mr. President, Doctor Parmenter has asked me if he may be excused because of the dangerous illness of his father which necessitates his absence.

Mr. Wickersham — Mr. President, Mr. Jesse Phillips left word with me that he was called away on official business and that he would like to have an excuse noted.

The President — One hundred and nine delegates have answered to their names. A quorum of the Convention is present. The Chair recognizes Mr. Rodenbeck, chairman of the Committee on Revision and Engrossment.

Mr. Rodenbeck — Mr. President, the Committee on Revision and Engrossment presents its final report on the final draft of the Constitution. The committee presents with its report a draft of the Constitution with the amendments made by the Convention on parchment. That has been sent to the desk. It also submits with its report a copy of this, what might be called the official draft of the Constitution, in the form of a document which is upon the desks of the members. The changes made by the committee which are not obvious in their character, I think are sufficiently explained in the printed report which I will now send to the desk.

The President — The Secretary will read the report.

The Secretary—

REPORT OF COMMITTEE ON REVISION AND ENGROSSMENT, PURSUANT TO THE RULES OF THE CONVENTION AND RESOLUTIONS ADOPTED SEPTEMBER 4, 1915, PRESENTING THE PRESENT CONSTITUTION OF THE STATE WITH THE AMENDMENTS THERETO ADOPTED BY THE CONVENTION, PROPERLY INSERTED, WITH SUCH CHANGES AS THE COMMITTEE DEEMED IT ADVISABLE TO INCORPORATE THEREIN

To the Convention:

Since the recess of the Convention on September fourth the Committee on Revision and Engrossment has been engaged in preparing a draft of the present Constitution of the State and in inserting therein the amendments adopted by this Convention. The draft prepared by the Committee has been compared with the original draft of the Constitution of 1894 on deposit in the State library and with the engrossed copies of the amendments signed by the President of this Convention. Upon this draft as a basis the Committee has proceeded to make such changes as were necessary to incorporate the amendments adopted by this Convention and to make such alterations as were necessary to make the language of the Constitution consistent and uniform. The Committee found that the Constitution of 1894, as adopted, abounded in the use of capitals, while the amendments made thereto during the past twenty years are almost entirely devoid of capitals. The Committee has adopted the style of the amendments made to the Constitution since 1894 as the more modern method of capitalization and has made the capitalization throughout the Constitution uniform. As this change can not possibly affect the substance of the Constitution, it seems unnecessary to refer specifically to any of these changes. The punctuation of the existing Constitution is more profuse than that which is now employed, but the Committee has not deemed it wise to change the punctuation of the un-amended portions of the Constitution of 1894, although it has not hesitated to strike out or insert commas in any of the amendments made by this Convention where such a change could not affect the meaning of the provisions.

In the following instances commas have been omitted: Page 8, line 24, after the word "meetings"; Page 9, line 35, after the word "apportionment"; Page 9, line 36, after the word "senator"; Page 9, line 37, after the word "senator"; Page 9, line 37, after the word "senators"; Page 10, line 32, after the word

"supervisors": Page 10, line 32, after the word "or"; Page 11, line 23, after the word "district": Page 11, line 24, after the word "which"; Page 11, line 25, after the word "districts"; Page 11, line 33, after the word "time"; Page 11, line 33, after the word "towns"; Page 11, line 37, after the word "legislature"; Page 11, line 37, after the word "body"; Page 11, line 41, after the word "apportionment"; Page 17, line 34, after the word "time"; Page 24, line 35, after the word "powers"; Page 25, line 27, after the word "treasurer"; Page 25, line 29, after the word "office"; Page 43, line 40, after the word "of"; Page 43, line 40, after the word "exceed"; Page 43, line 41, after the word "court"; Page 65, line 18, after the word "ability"; Page 65, line 29, after the word "vote".

In the following instances commas have been inserted: Page 3, line 4, after the word "referee"; Page 7, line 36, after the word "enumeration"; Page 36, line 8, after the word "may"; Page 45, line 6, after the word "twenty-two": Page 65, line 18, after the dash "—".

In the following instances the punctuation has been changed: Page 2, line 28, following the word "years" the apostrophe (') has been omitted. The semicolons appearing in Section 19, page 14, lines 10 to 35, inclusive, following the respective clauses take the place of periods which were improperly used in the constitution of 1894. Pages 22 and 23, article six, the paragraphs relating to the civil departments are numbered for convenience in reference from one to seventeen, respectively, to correspond with the numbering appearing in section one of such article. The word "said" appears quite commonly in the present constitution and in the amendments made during the past twenty years, while in the amendments proposed by this convention the word "such" has generally been used in place thereof. The committee regards the word "such" as the preferable term, although in a few instances the word "said" has been preserved.

In the following instances the word "such" has been substituted for the word "said": Page 5, line 12; page 5, line 14; page 9, line 23; page 11, line 26; page 12, line 1; page 14, line 6; page 14, line 23; page 30, line 27; page 30, line 34; page 37, line 23; page 41, line 33; page 41, line 41; page 44, line 2; page 44, line 23; page 48, line 25; page 48, line 39; page 49, line 3; page 49, line 4; page 53, line 30; page 54, line 9; page 54, line 29; page 54, line 31; page 54, line 35; page 54, line 39; page 56, line 13; page 57, line 23; page

57, line 24; page 57, line 28; page 69, line 17. The expressions "the state" and "this state" occur throughout the constitution. The committee has not made the expression uniform, because it found that there was an appropriateness in most cases in using the particular form that was employed. Likewise the expressions "the constitution" and "this constitution" appear without any discrimination in their use. The committee, with one or two exceptions, has made the reference to the constitution read "this constitution".

In the following instances this has been done: Page 56, line 21; page 57, line 7; page 59, line 7; page 59, line 9; page 67, line 19; page 67, line 31; page 68, line 13; page 68, line 40. In amendments adopted by this Convention the word "electors" has been substituted for the word "voters". The word "voters" however occurs in two instances in the existing constitution, and in these cases it has been changed to the word "electors" to make the use of terms for the same subject uniform. This change has been made in the following instances: Page 8, line 14, and page 8, line 15. The word "people" has been changed to the word "electors" at page 51, line 37, the former word being plainly erroneously used. The words "constitute a quorum" which is the expression commonly employed, have been used in place of the words "form a quorum". (See page 33, line 31: page 34, line 10.) Where the salary of an officer is specified the expression "annual salary" has been employed instead of the expression a specified salary "per year", in order to make the language in this respect uniform. (See page 37, lines 1 and 2.) The prevailing expression used in the Constitution in designating the month and the day of the month is, for instance, "the first day of January" and not "January first". The former expression has been used in the proposed draft of the constitution for the sake of uniformity. It seems unnecessary to call attention to these changes in detail. Likewise, the prevailing expression in designating the year is, for instance, "one thousand nine hundred and fifteen" and not "nineteen hundred and fifteen". The latter has been used in the recent amendments made to the constitution of 1894, but the committee feels that in a formal document like the Constitution of the State it is well to follow the expression "one thousand nine hundred and fifteen" instead of the less formal expression "nineteen hundred and fifteen". The expression "yeas and nays" is the predominant one in the Constitution in reference to voting in that manner and in the only instance where "ayes and noes" appears the expression has been changed to "yeas and nays". (See page 46, line 12). The spelling

of the word "moneys" which in one instance is spelled "m-o-n-i-e-s" has been made to read "m-o-n-e-y-s" where it appears in the Constitution. (See page 20, line 37.) The word "residue" as applied to the unexpired term of an office where a vacancy occurs has been changed to "remainder", which is used in nearly all instances in the present Constitution. (See page 12, line 30; page 40, line 6.) In view of the change in the language of the Constitution relating to the enumeration of the inhabitants of the State which will not require such an enumeration except where a federal census is not available, it becomes necessary to change the language of the Constitution in some places. For instance, on page 7, line 35, the word "state" has been stricken out and the remainder of the line after the word "enumeration", and all before the word "electors" on line 36, and after the word "preceding" the words "federal or state census" have been inserted, so that the sentence will read "In cities and villages having five thousand inhabitants or more, according to the last preceding federal or state census or enumeration", etc., and on page 28, line 15, after the word "every" there has been inserted the words "federal census or state" and there has been stricken out on line 16, the words "under the constitution, of the inhabitants of the state" so that the sentence will read "The legislature may alter the judicial districts once after every federal census or state enumeration", etc. Page 28, line 23, the words "state, or" have been omitted and the words "or state", have been inserted after the word "federal" so as to make the language uniform with the change made in a preceding part of the same section, and on page 28, line 26, the words "state, or" have been stricken out and after the word "federal" have been inserted the words "or state" for a like reason. Page 28, line 20, the letter "s" is added to the word "district". Page 63, line 15, insert after the word "latest" the words "federal or" and after the word "state" the words "census or" so that the sentence will read "All cities are classified according to the latest federal or state census or enumeration". The Committee has not in all instances brought the parts of verbs together, but an exception has been made on page thirteen in section ten, on account of the wide separation of the verb "may convene", and has eliminated the word "may" from line one and inserted it before the word "convene" in line four. Likewise after the word "assembly" in line six the word "may" has been eliminated and inserted before the word "convene" in line eight. On page 15, line 35, a reference appears to article seven of the existing Constitution. On account of the renumbering of the articles

it has been necessary to change this reference to "nine"; and in order to make the reference specific it has also been necessary to add after the word "constitution" the words "or section four of former article seven thereof as in force on the first day of January, one thousand nine hundred and ten". On page 17, line 26, the word "political" has been changed to "civil", and again on line 28, to make the expression correspond with the usual term employed in the remainder of the Constitution. Page 21, lines 30 and 31, the words "and the comptroller" have been stricken out and the comma after the word "governor" and the word "and" has been inserted after the word "governor", because the comptroller has been made the head of one of the departments of the State government. Page 22, line 37, after the word "the" the words "head of the" have been inserted and the words "administered by" have been stricken out to make the expression uniform with the other subdivisions of Section 2 in designating the head of the department. Page 33, line 15, the word "whom" has been changed to "which"" to correct an obvious grammatical error. Page 20, line 11, the word "their" has been changed to "its", to correct a grammatical error. Page 41, line 12, after the word "sessions" the words "in and" have been inserted to perfect the reference to the "court of general sessions in and for the city and county of New York" which is the name of the existing court. Page 48, line 39, and page 49, line 1, the words "state commission of highways" have been stricken out and the words "superintendent of public works" have been inserted in their stead, because under this Constitution the Superintendent of Public Works has charge of the highways of the State. Page 49, line 4, change the word "it" to "he". Page 51, line 24, the word "ten" has been stricken out and the word "thirteen" inserted to correct a reference, which is made necessary by the renumbering of articles. Page 59, line 2, the word "supplying" has been stricken out and the word "filling" inserted in its place to correct a bad use of English. Page 62, lines 27 to 31, the language relating to the adoption of new charters by cities was confused, and the committee has inserted in line 29 a comma after "seventeen", and in line 30 a comma after "provide" and after the word "thereafter" the words "either at the general or at a special election", so that the sentence will read "At the general election in the year one thousand nine hundred and seventeen, and unless its charter after one revision thereof shall otherwise provide, in every eighth year thereafter either at the general or at a special election every city shall submit to the electors thereof, the question 'Shall there be a commission to revise the charter of the

city ! ' ". Page 67, line 26, the word " each " has been changed to the word " such ", to correct an obvious error. Page 69, line 22, the word " nine " has been changed to the word " seven " to correct the reference made necessary by the renumbering of the articles. On page 69, line 26, the words " such " and " seven " have been stricken out, and on line 27 the words " as amended " and there have been inserted after the word " article " the words " nine of this constitution ". Page 68, line 5, the words " next ensuing after " have been stricken out and the word " following " has been inserted. Page 45, line 13, the letter " s " is added to the word " office ".

The committee found it necessary by reason of the creation of new articles and new sections to renumber the articles and sections in some instances. These changes appear in the schedule which is attached to this report, so that it is not deemed necesssary to call attention to them specifically. All of the references in the proposed Constitution have been checked up and are believed to be correct. All the changes reported by the committee, it is believed, come within the power of the committee to correct inaccuracies and inconsistencies. The committee has made no intentional change of substance. Accompanying this report is a draft of the present constitution incorporating all of the amendments made by this convention and embodying all of the changes above indicated. This draft of the constitution is preceded by an index of the articles giving the subject of each and is followed by a schedule showing the source of the various articles of the proposed constitution, the distribution of the sections of the present constitution and also the source of the sections of the proposed constitution marked Schedules A, B and C. In pursuance of the rules of the convention and the resolutions adopted by the convention, the committee has directed the preparation of an original draft of the proposed constitution on parchment and also has under preparation copies from the original plates which will be suitably bound and delivered to the members of the convention as soon as it can be done. The list of articles preceding the draft of the constitution and the schedules following it have been submitted merely for the convenience of the members of the convention and form no part of the original draft of the constitution reported by the committee. We desire to express our appreciation for the valuable services of Mr. Benton S. Rude, the parliamentary draftsman attached to the committee, and to George W. Munson, its stenographer, and also for faithful services of Charles H. Clark, who has been in the service of the committee during the past few

weeks, and to Frederick D. Colson and John T. Fitzpatrick, who have assisted the committee in the reading of the proofs.

Respectfully submitted,

ADOLPH J. RODENBECK,
Chairman.

LEMUEL E. QUIGG,
WILLIAM S. OSTRANDER,
CHARLES H. BETTS,
WILLIAM R. BAYES,
HARRY W. NEWBURGER,
TIMOTHY A. LEARY.
Committee.

Mr. Wickersham — Mr. President, I move the report be agreed to.

The President — The question is on agreeing to the report of the Committee on Revision. All in favor of agreeing to the report will say Aye, contrary No. The Ayes have it and the report is agreed to.

The Secretary will read the revised Constitution as reported by the Committee on Revision.

Mr. Rodenbeck — I think in reading the Constitution, the Secretary should read from the draft which has been sent to the desk rather than from this document.

The President — The suggestion is well founded. The Secretary will read from the document which is to be signed. Gentlemen of the Convention, the rule and proprieties require that this instrument shall be really read from the beginning to the end. The Chair takes the liberty of invoking your patience during that long and tedious proceeding.

The Secretary —

We, the People of the State of New York, grateful to Almighty God for our freedom, in order to secure its blessings, do establish this Constitution.

ARTICLE I.

Section 1. No member of this State shall be disfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his peers.

Section 2. The trial by jury in all cases in which it has been heretofore used shall remain inviolate forever; but a jury trial may be waived by the parties in all civil cases in the manner to be prescribed by law.

Section 3. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State to all mankind; and no person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.

Section 4. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require its suspension.

Section 5. Excessive bail shall not be required nor excessive fines imposed, nor shall cruel and unusual punishments be inflicted, nor shall witnesses be unreasonably detained.

Section 6. Except in cases of impeachment, and in cases of militia when in actual service, and the land and naval forces in time of war or which this state may keep with the consent of congress in time of peace, and in cases of petit larceny, under the regulation of the legislature, no person shall be held to answer for a capital or otherwise infamous crime unless on presentment or indictment of a grand jury. Any person may, however, in the manner prescribed by law after examination or commitment by a magistrate, waive indictment and trial by jury on a charge of felony punishable by not exceeding five years imprisonment, or of an indictable misdemeanor, all subsequent proceedings being had by information before a superior court of criminal jurisdiction or a judge or justice thereof. In any trial in any court whatever the party accused shall be allowed to appear and defend in person and with counsel as in civil actions, and in any criminal case shall have the right to at least one appeal. No person shall be subject to be twice put in jeopardy for the same offense; nor shall he be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty or property without due process of law; nor be denied the equal protection of the laws; nor shall private property be taken for public use without just compensation.

Section 7. (a) When private property shall be taken for any public use, the compensation to be made therefor, when such compensation is not made by the state, shall be ascertained by the supreme court without a jury, but not with a referee, or by one or more supreme court commissioners or, within the third and fourth judicial departments and such part of the second judicial department not within the city of New York by not less than three commissioners appointed by a court of record, as shall be prescribed by law. Where the proceedings are instituted by a civil division of

the state, compensation shall be paid before such taking, unless the supreme court, after hearing, because of public necessity shall otherwise direct.

(b) Private roads may be opened in the manner to be prescribed by law; but in every case the necessity of the road and the amount of all damage to be sustained by the opening thereof shall be first determined by a jury of freeholders, and such amount, together with the expenses of the proceeding, shall be paid by the person to be benefited.

(c) General laws may be passed permitting the owners or occupants of swamp or agricultural lands to construct and maintain for the drainage thereof, necessary drains, ditches and dikes upon the lands of others, under proper restrictions on making just compensation, which shall be assessed against the property benefited thereby.

(d) The legislature may authorize cities to take more land and property than is needed for actual construction in the laying out, widening, extending or relocating parks, public places, highways or streets; provided, however, that the additional land and property so authorized to be taken shall be no more than sufficient to form suitable building sites abutting on such park, public place, highway or street. After so much of the land and property has been appropriated for such park, public place, highway or street as is needed therefor, the remainder may be sold or leased. The legislature may also authorize cities, for the establishment of a uniform system of streets, to take real property within an abandoned street or highway and to sell and lease it.

Section 8. Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions or indictments for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

Section 9. No law shall be passed abridging the right of the people peaceably to assemble and to petition the government, or any department thereof; nor shall any divorce be granted otherwise than by due judicial proceedings; nor shall any lottery or sale of lottery tickets, pool-selling, book-making, or any other kind of gambling hereafter be authorized or allowed within this state; and the legislature shall pass appropriate laws to prevent offenses against any of the provisions of this section.

Section 10. The people of this state, in their right of sovereignty, are deemed to possess the original and ultimate property in and to all lands within the jurisdiction of the state; and all lands the title to which shall fail, from a defect of heirs, shall revert, or escheat to the people.

Section 11. All feudal tenures of every description, with all their incidents, are declared to be abolished, saving however, all rents and services certain which at any time heretofore have been lawfully created or reserved.

Section 12. All lands within this state are declared to be allodial, so that, subject only to the liability to escheat, the entire and absolute property is vested in the owners, according to the nature of their respective estates.

Section 13. No lease or grant of agricultural land, for a longer period than twelve years, hereafter made, in which shall be reserved any rent or service of any kind, shall be valid.

Section 14. All fines, quarter sales, or other like restraints upon alienation, reserved in any grant of land hereafter to be made, shall be void.

Section 15. No purchase or contract for the sale of lands in this state, made since the fourteenth day of October, one thousand seven hundred and seventy-five; or which may hereafter be made, of, or with the Indians, shall be valid unless made under the authority, and with the consent of the legislature. The peacemakers' courts of the Tonawanda nation, the peacemakers' courts and surrogates' courts of the Seneca nation and all other agencies of the Indian tribes and nations in so far as they exercise judicial functions are hereby abolished, and their jurisdiction shall vest in the courts of the state. All actions and proceedings now pending in such courts and agencies of the Indian nations and tribes shall be transferred for determination to the proper courts of the state. Except as otherwise provided by the treaties of this state and the constitution, treaties and laws of the United States, all general laws of the state, now or hereafter in force shall apply to all Indians within the state. The legislature shall provide for the preservation of the judicial records of the Indian tribes and nations.

Section 16. Such parts of the common law, and of the acts of the Legislature of the colony of New York, as together did form the law of such colony, on the nineteenth day of April, one thousand seven hundred and seventy-five, and the resolutions of the Congress of such colony, and of the Convention of the State of New York, in force on the twentieth day of April, one thousand seven hundred and seventy-seven, which have not since expired, or

been repealed or altered; and such acts of the Legislature of this State as are now in force, shall be and continue the law of this State, subject to such alterations as the Legislature shall make concerning the same. But all such parts of the common law, and such of the said acts, or parts thereof, as are repugnant to this Constitution, are hereby abrogated.

Section 17. All grants of land within this State, made by the king of Great Britain, or persons acting under his authority, after the fourteenth day of October, one thousand seven hundred and seventy-five, shall be null and void; but nothing contained in this Constitution shall affect any grants of land within this State, made by the authority of the said king or his predecessors, or shall annul any charters to bodies politic and corporate, by him or them made, before that day; or shall affect any such grants or charters since made by this State, or by persons acting under its authority; or shall impair the obligaion of any debts contracted by the State, or individuals, or bodies corporate, or any other rights of property, or any suits, actions, rights of action, or other proceedings in courts of justice.

Section 18. Except in the cases provided for in the next section, the right of action now existing to recover damages for injuries resulting in death shall never be abrogated and the amount recoverable shall not be subject to any statutory limitation.

Section 19. Nothing contained in this Constitution shall be construed to limit the power of the Legislature to enact laws for the protection of the lives, health or safety of employees; or for the payment, either by employers, or by employers and employees or otherwise, either directly or through a State or other system of insurance or otherwise, of compensation for injuries to or occupational diseases of employees or for death of employees resulting from such injuries or diseases without regard to fault as a cause thereof, except where the injury is occasioned by the wilful intention of the injured employee to bring about the injury or death of himself or of another, or where the injury results solely from the intoxication of the injured employee while on duty; or for the adjustment, determination and settlement, with or without trial by jury, of issues which may arise under such legislation; or providing that the right to such compensation, and the remedy therefor shall be exclusive of all other rights and remedies for such injuries or diseases or death. But all moneys paid by an employer, by reason of the enactment of any of the laws herein authorized, shall be deemed a part of the cost of operating the business of the employer.

ARTICLE II.

Section 1. Every male citizen of the age of twenty-one years, who shall have been a citizen for ninety days, and an inhabitant of this State one year next preceding an election, and for the last four months a resident of the county and for the last thirty days a resident of the election district in which he may offer his vote, shall be entitled to vote at such election in the election district of which he shall at the time be a resident, and not elsewhere, for all officers that now are or hereafter may be elective by the people; and upon all questions which may be submitted to the vote of the people, provided that in time of war no elector in the actual military service of the State, or of the United States, in the army or navy thereof, shall be deprived of his vote by reason of his absence from such election district; and the Legislature shall have power to provide the manner in which and the time and place at which such absent electors may vote, and for the return and canvass of their votes in the election districts in which they respectively reside.

Section 2. No person who shall receive, accept, or offer to receive or pay, offer to promise to pay, contribute, offer or promise to contribute to another, to be paid or used, any money or other valuable thing as a compensation or reward for the giving or withholding a vote at an election, or who shall make any promise to influence the giving or withholding any such vote, or who shall make or become directly or indirectly interested in any bet or wager depending upon the result of any election, shall vote at such election; and upon challenge for such cause, the person so challenged, before the officers authorized for that purpose shall receive his vote, shall swear or affirm before such officers that he has not received or offered, does not expect to receive, has not paid, offered or promised to pay, contributed, offered or promised to contribute to another, to be paid or used, any money or other valuable thing as a compensation or reward for the giving or withholding a vote at such election, and has not made any promise to influence the giving or withholding of any such vote, nor made or become directly or indirectly interested in any bet or wager depending upon the result of such election. The Legislature shall enact laws excluding from the right of suffrage all persons convicted of bribery or of any infamous crime.

Section 3. For the purpose of voting, no person shall be deemed to have gained or lost a residence, by reason of his presence or absence, while employed in the service of the United States; nor

while engaged in the navigation of the waters of this state, or of the United States, or of the high seas; nor while a student of any seminary of learning; nor while kept at any almshouse, or other asylum, or institution wholly or partly supported at public expense, or by charity; nor while confined in any public prison.

Section 4. Laws shall be made for the regulation of elections and for ascertaining by proper proofs the electors who shall be entitled to the right of suffrage hereby established and for their annual registration, which shall be completed at least fifteen days before each general election. Such registration shall not be required for town and village elections except by express provision of law. In cities and villages having five thousand inhabitants or more, according to the last preceding federal or state census or enumeration, electors shall be registered upon personal application only. Laws may be made providing for special registration therein on personal application before such boards or officers as the legislature shall designate, on a day or days not more than five months prior to the day of election, of such electors as shall then declare under oath that they are engaged in a regular vocation or occupation which will occasion their absence from the county during each of the regular days of registration. Such laws shall require electors so specially registered to establish, on the first regular day of registration, their continued right to vote in the election district for which they were registered but shall not require further personal appearance. Electors not residing in such cities or villages shall not be required to apply in person for registration at the first meeting of the officers having charge of the registry of electors.

Section 5. All elections by the citizens, except for such town officers as may by law be directed to be otherwise chosen, shall be by ballot, or by such other method as may be prescribed by law, provided that secrecy in voting be preserved.

Section 6. All laws creating, regulating or affecting boards or officers charged with the duty of registering electors, or of distributing ballots at the polls to electors, or of receiving, recording or counting votes at elections, shall secure equal representation of the two political parties which, at the general election next preceding that for which such boards or officers are to serve, cast the highest and the next highest number of votes. All such boards and officers shall be appointed or elected in such manner, and upon the nomination of such representatives of such parties respectively, as the legislature may direct. Existing laws on this subject shall continue until the legislature shall otherwise provide. This section shall not apply to town meetings or to village elections.

ARTICLE III.

Section 1. The legislative power of this state shall be vested in the senate and assembly.

Section 2. The senate shall consist of fifty members except as hereinafter provided. They shall be chosen for two years. The assembly shall consist of one hundred and fifty members, who shall be chosen for one year.

Section 3. The state shall be divided into fifty districts to be called senate districts, each of which shall choose one senator. The districts shall be numbered from one to fifty, inclusive. The senate districts shall remain as at present constituted until altered as hereinafter provided.

Section 4. Such senate districts shall be so altered by the legislature at the first regular session after the return of and based upon the state enumeration taken in the year one thousand nine hundred and fifteen and shall remain unaltered until altered as hereinafter provided. At the regular session of the legislature in the year after the tabulation of each federal census the senate districts shall be altered by the legislature. Senate districts altered as herein provided shall remain unaltered until the time herein appointed for another alteration. Provided, however, that if a federal census shall not be available for any such alteration the same shall be based upon an enumeration of the inhabitants of the state, excluding aliens, and the legislature shall provide for such an enumeration for that purpose. In making such alterations the legislature shall so provide that each senate district shall contain as nearly as may be an equal number of inhabitants, excluding aliens, and be in as compact form as practicable and shall, at all times, consist of contiguous territory, and no county shall be divided in the formation of a senate district except to make two or more senate districts wholly in such county.

No town and no block in a city inclosed by streets or public ways shall be divided in the formation of Senate districts; nor shall any district contain a greater excess in population over an adjoining district in the same county than the population of a town or block therein adjoining such district. Counties, towns or blocks which, from their location, may be included in either of two districts, shall be so placed as to make such districts most nearly equal in number of inhabitants, excluding aliens. No county shall have four or more Senators unless it shall have a full

ratio for each Senator. No county shall have more than one-third of all the Senators; and no two counties or the territory thereof as organized on the first day of January, one thousand eight hundred and ninety-five, which are adjoining counties or which are separated only by public waters shall have more than one-half of all the Senators. The ratio for apportioning Senators shall always be obtained by dividing the number of inhabitants, excluding aliens, by fifty and the Senate shall always be composed of fifty members, except that if any county having three or more Senators at the time of any apportionment shall be entitled on such ratio to an additional Senator or Senators, such additional Senator or Senators shall be given to such county in addition to the fifty Senators, and the whole number of Senators shall be increased to that extent.

Section 5. The members of the Assembly shall be chosen by single districts and shall be apportioned by the Legislature at the first regular session after the return of the State enumeration taken in the year one thousand nine hundred and fifteen among the several counties of the State. At the regular session of the Legislature in each year in which Senate districts shall be altered such members of the Assembly shall again be apportioned by the Legislature. Apportionments of members of Assembly shall remain unaltered until the time herein appointed for another apportionment thereof. Every apportionment of members among the several counties of the State shall be as nearly as may be according to the number of their respective inhabitants, excluding aliens. Every county heretofore established and separately organized, except the county of Hamilton, shall always be entitled to one member of Assembly, and no county shall hereafter be erected unless its population shall entitle it to a member. The county of Hamilton shall elect with the county of Fulton until the population of the county of Hamilton shall, according to the ratio, entitle it to a member. The quotient obtained by dividing the whole number of inhabitants of the State, excluding aliens, by the number of members of Assembly, shall be the ratio for apportionment which shall be made as follows: one member of Assembly shall be apportioned to every county, including Fulton and Hamilton as one county, containing less than the ratio and one-half over. Two members shall be apportioned to every other county. The remaining members of Assembly shall be apportioned to the counties having more than two ratios according to the number of inhabitants, excluding aliens. Members apportioned on remainders shall be apportioned to the counties having the highest remainders in the order thereof respectively. No county shall have more members

of Assembly than a county having a greater number of inhabitants, excluding aliens. In any county entitled to more than one member, the board of supervisors or if there be none, the board or body exercising similar functions, and in any city embracing an entire county, or more than one county, and having no board of supervisors, the members elected from each county to the board of aldermen or if there be none, the body most nearly exercising the powers of a board of aldermen shall assemble on the second Tuesday of June, one thousand nine hundred and sixteen, and at such other times as the Legislature thereafter making an apportionment, as hereinafter provided, shall prescribe, and divide each county into Assembly districts as nearly equal in number of inhabitants, excluding aliens, as may be, of convenient and contiguous territory in as compact form as practicable, each of which shall be wholly within a Senate district formed under the same apportionment, equal to the number of members of Assembly to which such county shall be entitled, and shall cause to be filed in the office of the Secretary of State and of the clerk of such county, a description of such districts, specifying the number of each district and of the inhabitants thereof, excluding aliens, according to the last preceding State enumeration, or if no State enumeration shall have been taken within a period of five years prior to such apportionment, then according to the preceding federal census; and such apportionment and districts shall remain unaltered until another federal census shall be made. In counties having more than one Senate district, the same number of Assembly districts shall be put in each Senate district, unless the Assembly districts cannot be evenly divided among the Senate districts of any county, in which case one more Assembly district shall be put in the Senate district in such county having the largest, or one less Assembly district shall be put in the Senate district in such county having the smallest number of inhabitants, excluding aliens, as the case may require. No town, and no block in a city inclosed by streets or public ways, shall be divided in the formation of Assembly districts, nor shall any district contain a greater excess in population over an adjoining district in the same Senate district than the population of a town or block therein adjoining such Assembly district. Towns or blocks which from their location may be included in either of two Assembly districts shall be so placed as to make such Assembly districts most nearly equal in number of inhabitants, excluding aliens. But in the division of cities except cities of the first class under the first apportionment, regard shall be had to the number of inhabitants, excluding aliens, of the election districts according to the State enumeration of one thousand nine hundred and fifteen, so far as may be, instead of blocks.

Nothing in this section shall prevent the division at any time of counties and towns and the erection of new counties and towns by the Legislature. Assembly districts as at present constituted shall remain unaltered until altered as herein provided. An apportionment by the Legislature or other body shall be subject to review by the supreme court at the suit of any citizen, under such reasonable regulations as the Legislature may prescribe; and any court before which a cause may be pending involving an apportionment shall give precedence thereto over all other causes and proceedings, and if such court be not in session it shall convene promptly for the disposition of the same.

Section 6. The elections of Senators and Members of Assembly, pursuant to the provisions of this Constitution, shall be held on the Tuesday succeeding the first Monday of November, unless otherwise directed by the Legislature.

Section 7. The political year and legislative term shall begin on the first day of January; and the Legislature shall, every year, assemble on the first Wednesday in January.

Section 8. Each member of the Legislature shall receive for his services an annual salary of two thousand five hundred dollars. The members of each House shall also receive the railroad fare actually paid in going to and returning from their place of meeting on the most usual route, but not oftener than once each week during any session of the Legislature. Such railroad fare shall be repaid only on the verified voucher of the member entitled thereto after audit by the Comptroller. Senators, when the Senate alone is convened in extraordinary session, or when serving as members of the court for the trial of impeachments, and such members of the Assembly, not exceeding nine in number, as shall be appointed managers of an impeachment, shall receive an additional allowance of ten dollars a day.

Section 9. A majority of the members elected to each House shall constitute a quorum to do business. Each House shall determine the rules of its own proceedings and be the judge of the elections, returns and qualifications of its own members and shall choose its own officers. The Senate shall choose a temporary president. The Assembly shall choose a speaker. If the Lieutenant-Governor become Governor, the temporary president shall become Lieutenant-Governor for the remainder of the term. If the Lieutenant-Governor be impeached or be unable to discharge the duties of the office or be acting Governor, the temporary president shall act as Lieutenant-Governor during such impeachment or inability or while the Lieutenant-Governor is acting Governor. If the Lieutenant-Governor refuse to act as president or be absent from

the chair, the temporary president shall preside. If the speaker of the Assembly be unable to perform the duties of the office or be acting Governor, the Assembly may choose a temporary speaker who shall act as speaker during such inability or while the speaker is acting Governor or until a speaker is chosen.

Section 10. The legislature of its own motion, in the manner to be provided by joint rule which shall continue in force until abrogated or amended by both the senate and the assembly, may convene to take action in the matter of removal of a judge of the court of appeals or justice of the supreme court. The assembly of its own motion, in the manner to be provided by rule which shall continue in force until abrogated or amended by the assembly, may convene for the purposes of impeachment. At a meeting under this section no subject shall be acted upon except that for which the meeting is herein authorized to be held.

Section 11. If any person shall, after his election as a member of the legislature, be elected to congress, or appointed to any office, civil or military, under the government of the United States, or under any city government, his acceptance thereof shall vacate his seat.

Section 12. Each house shall keep a journal of its proceedings and a record of its debates and promptly publish the same from day to day, except such parts as may require secrecy. The doors of each house shall be kept open, except when the public welfare shall require secrecy. Neither house shall, without the consent of the other, adjourn for more than two days.

Section 13. For any speech or debate in either house of the legislature, the members shall not be questioned in any other place.

Section 14. Any bill may originate in either house of the legislature, and all bills passed by one house may be amended by the other.

Section 15. The enacting clause of all bills shall be "The People of the State of New York, represented in Senate and Assembly, do enact as follows:" and no law shall be enacted except by bill.

Section 16. No bill shall be passed or become a law unless it shall have been printed and upon the desks of the members, in its final form, at least three calendar legislative days prior to its final passage. No bill shall be passed or become a law, except by the assent of a majority of the members elected to each branch of the legislature. Immediately after the last reading of a bill the question upon its final passage shall be taken and the yeas and nays entered on the journal.

Section 17. No private or local bill, which may be passed by

the legislature, shall embrace more than one subject, and that shall be expressed in the title.

Section 18. No act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of such act, or which shall enact that any existing law, or part thereof, shall be applicable, except by inserting it in such act.

Section 19. The legislature shall not pass a private or local bill in any of the following cases:

Changing the names of persons;

Laying out, opening, altering, working or discontinuing roads, highways or alleys, or for draining swamps or other low lands;

Locating or changing county seats;

Providing for changes of venue in civil or criminal cases;

Incorporating villages;

Providing for election of members of boards of supervisors;

Selecting, drawing, summoning or empaneling grand or petit jurors;

Regulating the rate of interest on money;

The opening and conducting of elections or designating places of voting;

Creating, increasing or decreasing fees, percentage or allowances of public officers, during the term for which such officers are elected or appointed;

Granting to any corporation, association or individual the right to prove a claim against the State or any civil division thereof;

Authorizing any civil division of the state to allow or pay any claim or account;

Granting to any corporation, association or individual the right to lay down railroad tracks;

Granting to any private corporation, association or individual any exclusive privilege, immunity or franchise whatever;

Granting to any person, association, firm or corporation an exemption from taxation on real or personal property;

Providing for building bridges, and chartering companies for such purposes, except on the Hudson river below Waterford, and on the East river, or over the waters forming a part of the boundaries of the state.

The legislature shall pass general laws providing for the cases enumerated in this section, and for all other cases which in its judgment, may be provided for by general laws. But no law shall authorize the construction or operation of a street railroad except upon the condition that the consent of the owners of one-half in value of the property bounded on, and the consent also of the local authorities having the control of that portion of a street or highway upon which it is proposed to construct or operate such railroad

be first obtained, or in case the consent of such property owners cannot be obtained, the appellate division of the supreme court, in the department in which it is proposed to be constructed, may, upon application appoint three commissioners who shall determine, after a hearing of all parties interested, whether such railroad ought to be constructed or operated, and their determination, confirmed by the court, may be taken in lieu of the consent of the property owners.

Section 20. The Legislature shall neither audit nor allow any private claim or account against the State or against any civil division thereof, but may appropriate money to pay such claims and accounts against the State as shall have been audited and allowed according to law.

Section 21. The assent of two-thirds of the members elected to each branch of the Legislature shall be requisite to every bill appropriating the public moneys or property for local or private purposes. No public moneys or property shall be appropriated for the construction or improvement of any building, bridge, highway, dike, canal, feeder, waterway or other work until plans and estimates of the cost of such work shall have been filed with the Secretary of State by the Superintendent of Public Works, together with a certificate by him as to whether or not in his judgment the general interests of the State then require that such improvement be made at State expense. This section shall not apply to the contributions of the State to the cost of eliminating grade crossings or to items in the budget for the construction of highways from the proceeds of bonds authorized under Section four of Article IX of this Constitution or Section four of former Article VII thereof as in force on the first day of January, one thousand nine hundred and ten.

Section 22. No money shall ever be paid out of the treasury of this State or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made not later than three months after the close of the fiscal year next succeeding that in which such appropriation was made; and every such law making a new appropriation or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object to which it is to be applied; and it shall not be sufficient for such law to refer to any other law to fix such sum. Appropriations made by the Legislature in the year one thousand nine hundred and sixteen shall be made for a period ending the thirtieth day of June, one thousand nine hundred and seventeen, and thereafter the fiscal year of the State shall end on the thirtieth day of June of each year, unless otherwise provided by law.

Section 23. No provision or enactment shall be embraced in the annual appropriation or supply bill, unless it relates specifically to some particular appropriation in the bill; and any such provision or enactment shall be limited in its operation to such appropriation.

Section 24. Every law which imposes, continues or revives a tax shall distinctly state the tax and the object to which it is to be applied, and it shall not be sufficient to refer to any other law to fix such tax or object.

Section 25. There shall be in each county, except in a county wholly included in a city, a board of supervisors, to be composed of such members and elected in such manner and for such period as is or may be provided by law. In a city which includes an entire county, or two or more entire counties, the powers and duties of a board of supervisors may be devolved upon the municipal assembly, common council, board of aldermen or other legislative body of the city. Provided, however, that the Legislature, by general laws, may establish different forms of government for counties not wholly included in a city, any such form of government to become effective in any county only when approved by the electors thereof in such manner as the Legislature may prescribe.

No local or special law relating to a county or counties except to a county or counties wholly included within a city shall be enacted except upon request, by resolution, of the governing body of the county or counties to be affected.

Section 26. The Legislature shall, by general laws, confer upon the boards of supervisors, or other governing bodies, of the several counties of the State such further powers of local legislation and administration as the Legislature may, from time to time, deem expedient. In counties which now have, or may hereafter have, county auditors or other fiscal officers, authorized to audit bills, accounts, charges, claims or demands against the county, the Legislature may confer such powers upon such auditors, or fiscal officers, as the Legislature may, from time to time, deem expedient. The Legislature may confer upon any elective or appointive county officer or officers any of the powers and duties now exercised by the towns of any county or the officer or officers thereof relating to highways, public safety and the care of the poor.

Section 27. No extra compensation shall be granted or allowed to any public officer, servant, agent or contractor, by the state or any civil division thereof or by any board, officer or other agency of the state, or of any such civil division.

Section 28. The legislature shall, by law, provide for the occupation and employment of prisoners sentenced to the several state

prisons, penitentiaries, jails and reformatories in the state; and on and after the first day of January, in the year one thousand eight hundred and ninety-seven, no person in any such prison, penitentiary, jail or reformatory, shall be required or allowed to work while under sentence thereto at any trade, industry or occupation wherein or whereby his work, or the product or profit of his work, shall be farmed out, contracted, given or sold to any person, firm, association or corporation. This section shall not be construed to prevent the legislature from providing that convicts may work for, and that the products of their labor may be disposed of to, the state or any civil division thereof, or for or to any public institution owned or managed and controlled by the state, or any civil division thereof.

Section 29. The legislature shall have the power to regulate or prohibit manufacturing in tenement houses.

ARTICLE IV.

Section 1. The executive power shall be vested in a governor, who shall hold his office for two years. A lieutenant-governor shall be chosen at the same time and for the same term. The governor shall receive for his services an annual salary of ten thousand dollars until the first day of January, one thousand nine hundred and seventeen, after which he shall receive for his services an annual salary of twenty thousand dollars. There shall be provided for his use a suitable and furnished executive residence.

Section 2. No person shall be eligible to the office of governor or lieutenant-governor, except a citizen of the United States, of the age of not less than thirty years, and who shall have been five years next preceding his election a resident of this state.

Section 3. The governor and lieutenant-governor shall be elected at the times and places of choosing members of the assembly. The persons respectively having the highest number of votes for governor and lieutenant-governor shall be elected; but in case two or more shall have an equal and the highest number of votes for governor, or for lieutenant-governor, the two houses of the legislature at its next annual session shall forthwith, by joint ballot, choose one of such persons so having an equal and the highest number of votes for governor or lieutenant-governor.

Section 4. The governor shall be commander-in-chief of the military and naval forces of the state. He shall have power to convene the legislature, or the senate only, on extraordinary occasions. At extraordinary sessions no subject shall be acted upon, except such as the governor may recommend for consideration. He shall communicate by message to the legislature at every session the condition of the state, and recommend such matters to it as he shall judge expedient. He shall transact all necessary business

with the officers of government, civil and military. He shall expedite all such measures as may be resolved upon by the legislature, and shall take care that the laws are faithfully executed.

Section 5. The governor shall have the power to grant reprieves, commutations and pardons after conviction, for all offenses except treason and cases of impeachment, upon such conditions and with such restrictions and limitations, as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason, he shall have power to suspend the execution of the sentence, until the case shall be reported to the legislature at its next meeting, when the legislature shall either pardon, or commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall annually communicate to the legislature each case of reprieve, commutation or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the commutation, pardon or reprieve.

Section 6. If the office of governor be vacant the lieutenant-governor shall become governor for the remainder of the term. If the governor be under impeachment or be unable to discharge the powers and duties of the office or be absent from the state the lieutenant-governor shall act as governor during such inability, absence or the pendency of such impeachment. But when the governor shall, with the consent of the legislature, be out of the state, in time of war, at the head of a military force thereof, he shall continue commander-in-chief of all the military force of the state.

Section 7. The lieutenant-governor shall possess the same qualifications of eligibility for office as the governor. He shall be president of the senate, but shall have only a casting vote therein. If the office of governor be vacant and there be no lieutenant-governor, such vacancy shall be filled for the remainder of the term at the next general election happening not less than three months after such vacancy occurs; and in any such case, until the vacancy be filled by election, the temporary president of the senate, or if there be none, the speaker of the assembly shall become governor until the first day of the political year next succeeding the election at which the office of governor shall be filled. If the office of governor be vacant and the lieutenant-governor be under impeachment, or unable to discharge the powers and duties of the office of governor or be absent from the state, the temporary president of the senate shall act as governor during such inability, absence or the pendency of such impeachment. If the temporary president of the senate be unable to discharge the powers and duties of the office of governor or be absent from the state the speaker of the assembly shall act as governor during such inability or absence.

Section 8. The lieutenant-governor shall receive for his services an annual salary of five thousand dollars, and shall not receive or be entitled to any other compensation, fee or perquisite, for any duty or service he may be required to perform by the constitution or by law.

Section 9. Every bill which shall have passed the senate and assembly shall, before it becomes a law, be presented to the governor; if he approve, he shall sign it; but if not, he shall return it with his objections to the house in which it shall have originated, which shall enter the objections at large on the journal, and proceed to reconsider it. If after such reconsideration, two-thirds of the members elected to that house shall agree to pass the bill, it shall be sent together with the objections to the other house by which it shall likewise be reconsidered; and if approved by two-thirds of the members elected to that house, it shall become a law notwithstanding the objections of the governor. In all such cases, the votes in both houses shall be determined by yeas and nays, and the names of the members voting shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the legislature shall, by its adjournment, prevent its return, in which case it shall not become a law without the approval of the governor. No bill shall become a law after the final adjournment of the legislature, unless approved by the governor within thirty days after such adjournment. If any bill presented to the governor contain several items of appropriation of money, he may object to one or more of such items while approving of the other portion of the bill. In such case, he shall append to the bill, at the time of signing it, a statement of the items to which he objects; and the appropriation so objected to shall not take effect. If the legislature be in session, he shall transmit to the house in which the bill originated a copy of such statement, and the items objected to shall be separately reconsidered. If on reconsideration one or more of such items be approved by two-thirds of the members elected to each house, the same shall be part of the law, notwithstanding the objections of the governor. All the provisions of this section, in relation to bills not approved by the governor, shall apply in cases in which he shall withhold his approval from any item or items contained in a bill appropriating money.

ARTICLE V.

Section 1. On or before the fifteenth day of November in the year one thousand nine hundred and sixteen and in each year thereafter the head of each department of the state government

except the legislature and judiciary, shall submit to the governor itemized estimates of appropriations to meet the financial needs of such department, including a statement in detail of all moneys for which any general or special appropriation is desired at the ensuing session of the legislature, classified according to relative importance and in such form and with such explanation as the governor may require.

The governor, after public hearing thereon, at which he may require the attendance of heads of departments and their subordinates, shall revise such estimates according to his judgment.

Itemized estimates of the financial needs of the legislature certified by the presiding officer of each house and of the judiciary certified by the comptroller shall be transmitted to the governor before the fifteenth day of January next succeeding for inclusion in the budget without revision but with such recommendation as he may think proper.

On or before the first day of February next succeeding he shall submit to the legislature a budget containing a complete plan of proposed expenditures and estimated revenues. It shall contain all the estimates so revised or certified and shall be accompanied by a bill or bills for all proposed appropriations and reappropriations, clearly itemized; it shall show the estimated revenues for the ensuing fiscal year and the estimated surplus or deficit of revenues at the end of the current fiscal year together with the measures of taxation, if any, which the governor may propose for the increase of the revenues. It shall be accompanied by a statement of the current assets, liabilities, reserve and surplus or deficit of the state; statements of the debts and funds of the state; an estimate of its financial condition as of the beginning and end of the ensuing fiscal year; and a statement of revenues and expenditures for the two fiscal years next preceding said year, in form suitable for comparison. The governor may, before final action by the legislature thereon, amend or supplement the budget.

A copy of the budget and of any amendments or additions thereto shall be forthwith transmitted by the governor to the comptroller.

The governor and the heads of such departments shall have the right, and it shall be their duty when requested by either house of the legislature, to appear and be heard in respect of the budget during the consideration thereof, and to answer inquiries relevant thereto. The procedure for such appearance and inquiries shall be provided by law. The legislature may not alter an appropriation bill submitted by the governor except to strike out or reduce items therein; but this provision shall not apply to items

for the legislature or judiciary. Such a bill when passed by both houses shall be a law immediately without further action by the governor, except that appropriations for the legislature and judiciary shall be subject to his approval as provided in section nine of article four.

Neither house shall consider further appropriations until the appropriation bills proposed by the governor shall have been finally acted on by both houses; nor shall such further appropriations be then made except by separate bills each for a single work or object, which bills shall be subject to the governor's approval as provided in section nine of article four. Nothing herein contained shall be construed to prevent the governor from recommending that one or more of his proposed bills be passed in advance of the others to supply the immediate needs of government.

ARTICLE VI.

Section 1. There shall be the following civil departments in the state government: (1) law, (2) finance, (3) accounts, (4) treasury, (5) taxation, (6) state, (7) public works, (8) health, (9) agriculture, (10) charities and corrections, (11) banking, (12) insurance, (13) labor and industry, (14) education, (15) public utilities, (16) conservation and (17) civil service.

Section 2. (1) The head of the department of law shall be the attorney-general. He shall be elected at the same time and for the same term as the governor.

(2) The head of the department of finance shall be the comptroller. He shall be elected at the same time and for the same term as the governor. Excepting the powers of examination and verification of accounts vested in the department of accounts, he shall have the present powers and duties of the comptroller, subject to the authority of the legislature to increase, modify or diminish the same.

(3) The head of the department of accounts shall be the commissioner of accounts. He shall have power to examine and verify all accounts showing the financial transactions of the state and its several departments and officers. He shall also make such special examinations and reports as from time to time may be required by resolution of either house of the legislature.

(4) The head of the department of the treasury shall be the treasurer.

(5) The head of the department of taxation shall be a state tax commission.

(6) The head of the department of state shall be the secretary of state. He shall be the keeper of the great seal and of the

records and archives of the state, shall issue writs of election and certify the results.

(7) The head of the department of public works shall be the superintendent of public works. He shall have the construction, care, maintenance and operation of the state's public works, including canals, highways, and all public buildings not from time to time assigned by law to any other department, and shall provide for the needs of the several state departments in engineering and architecture.

(8) The head of the department of health shall be the commissioner of health.

(9) The head of the department of agriculture shall be the commissioner of agriculture.

(10) The head of the department of charities and corrections shall be the secretary of charities and corrections. He shall have power of inspection and supervision of all state charitable institutions, state hospitals for the insane, state prisons and other state correctional institutions.

(11) The head of the department of banking shall be the superintendent of banks.

(12) The head of the department of insurance shall be the superintendent of insurance.

(13) The head of the department of labor and industry shall be an industrial commission or commissioner as may be provided by law. Commissioners shall be appointed by the governor by and with the advice and consent of the senate.

(14) The department of education shall be administered by the university of the state of New York. The chief administrative officer of the department shall be appointed by the regents of the university.

(15) The department of public utilities shall consist of two public service commissions. Commissioners shall be appointed by the governor by and with the advice and consent of the senate. The governor may remove any commissioner for cause after service upon him of a written statement of the alleged cause and an opportunity to be heard thereon. Until the legislature shall otherwise provide, the existing commissions are continued with the jurisdiction and powers at present vested in them.

(16) The department of conservation shall be under the direction of the conservation commission.

(17) The department of civil service shall be under the direction of a civil service commission consisting of three commissioners. They shall be appointed by the governor by and with the advice and consent of the senate, for terms of six years, and shall be so classified that one shall go out of office at the end of

every two years. The governor may remove any commissioner for cause after service upon him of a written statement of the alleged cause and an opportunity to be heard thereon. The commission shall take care that the provisions of this constitution relating to civil service and to laws enacted thereunder are faithfully observed and enforced.

Section 3. At the session immediately following the adoption of this Constitution, the Legislature shall provide by law for the appropriate assignment, to take effect not earlier than the first day of January, one thousand nine hundred and seventeen, of all the civil administrative and executive functions of the State government, except those of assistants in the office of the Governor, to the several departments in this article provided. Subject to the limitations contained in this Constitution the Legislature may from time to time assign by law new powers and functions to departments, officers, boards or commissions continued or created under this Constitution, and increase, modify or diminish their powers and functions. No specific grant of power herein to a department shall prevent the Legislature from conferring additional powers upon such department. No new departments shall be created hereafter. Any bureau, board, commission or office hereafter created except assistants in the office of the Governor shall be placed in one of the departments enumerated in this article. The elective State officers in office at the time this Constitution takes effect shall continue in office until the end of the terms for which they were elected. Pending the assignment of the civil administrative and executive functions by the Legislature pursuant to the direction of this section, the powers and duties of the several departments, boards, commissions and offices now existing are continued. Subject to the power of the Legislature to reduce the number of officers, when the powers and duties of any existing office are assigned to any department, the officers exercising such powers shall continue in office in such department, and their term of office shall not be shortened by such assignment.

Section 4. The heads of all the departments and the members of all commissions unless otherwise provided in this Constitution shall be appointed by the Governor and may be removed by him in his discretion.

Section 5. The attorney-general and comptroller may be removed from office by impeachment in the same manner as the governor. A vacancy in the office of attorney-general or of comptroller shall be filled for the remainder of the term at the next general election happening not less than three months after such vacancy occurs. Until the vacancy be so filled by election, the

governor, or if the senate be in session, the governor by and with the advice and consent of the senate, may fill such vacancy by appointment which shall continue until the first day of the political year next succeeding the election at which such office may be filled. The compensation provided by law for each of such officers shall not be increased or diminished during the term for which he shall have been elected and he shall not receive to his use any fees or perquisites of office or other compensation.

Section 6. All appointed heads of departments shall be subject to impeachment in the same manner as the governor or they may be removed by the senate by vote of two-thirds of all the members elected thereto. A vacancy occurring in a board or commission appointed by and with the advice and consent of the senate for a fixed term shall be filled for the unexpired term in the same manner as an original appointment, except that a vacancy occurring or existing while the senate is not in session shall be filled by the governor by appointment for a term expiring at the end of twenty days from the commencement of the next meeting of the senate.

Section 7. The lieutenant-governor, speaker of the assembly, secretary of state, attorney-general, comptroller, treasurer and superintendent of public works shall constitute the canal board and be the commissioners of the land office and the commissioners of the canal fund.

Section 8. This article shall not apply to the military or naval affairs or forces nor to property from time to time devoted to military or naval purposes.

ARTICLE VII.

Section 1. The department of conservation shall consist of nine commissioners to serve without compensation and to be appointed by the governor by and with the advice and consent of the senate for terms which shall expire in nine successive years, the first ending on the first day of January, one thousand nine hundred and seventeen, and their successors shall be appointed for terms of nine years. Vacancies shall be filled for the unexpired term. One commissioner shall reside in each judicial district. No person shall be eligible to or shall continue to hold the office of commissioner, who is engaged in the business of lumbering in any forest preserve county or who is engaged in any business in the prosecution of which hydraulic power is used or in which water is distributed or sold under any public franchise or who is an officer or holder of the stock or bonds of any corporation engaged in such business within the State. They shall be subject to removal by the Governor on charges, after an opportunity to be

heard. Subject to the limitations in this Constitution contained, the department shall be charged with the development and protection of the natural resources of the State; the encouragement of forestry and the suppression of forest fires throughout the State; the exclusive care, maintenance and administration of the forest preserve; the conservation, prevention or pollution, and regulation of the waters of the State; the protection and propagation of its fish, birds, game, shellfish and crustacea, except migratory fish of the sea within the limits of the marine district, with the power, subject to the veto within thirty days of the Governor, to enact regulations with respect to the taking possession, sale and transportation thereof, which shall have the force of law, when filed in the office of the department of State and published as the Legislature may provide, until and unless the Legislature shall thereafter modify such regulations. The department shall also be entrusted with the enforcement of the general laws of the State respecting the subjects hereinbefore enumerated and exercise such additional powers as from time to time may be conferred by law. The department shall appoint and may at pleasure remove a superintendent. It may also appoint all other necessary subordinates.

Section 2. The lands of the State, now owned or hereafter acquired, constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold or exchanged, or be taken by any corporation, public or private, nor shall the trees and timber thereon be sold, removed or destroyed. The department is, however, empowered to reforest lands in the forest preserve, to construct fire trails thereon, and to remove dead trees and dead timber therefrom for purposes of reforestation and fire protection solely, but shall not sell the same. Nothing herein contained shall prevent the State from constructing a State highway from Saranac Lake in Franklin county to Long Lake in Hamilton county and thence to Old Forge in Herkimer county by way of Blue Mountain lake and Raquette lake.

Section 3. The legislature may by general laws provide for the use of not exceeding three per centum of such lands for the construction and maintenance of reservoirs for municipal water supply, for the canals of the state and to regulate the flow of streams. Such reservoirs shall be constructed, owned and controlled by the state, but such work shall not be undertaken until after the boundaries and high flow lines thereof shall have been accurately surveyed and fixed, and after public notice, hearing and determination that such lands are required for such public use. The expense of any such improvements shall be apportioned on

the public and private property and municipalities benefited to the extent of the benefits received. Any such reservoir shall always be operated by the state and the legislature shall provide for a charge upon the property and municipalities benefited for a reasonable return to the state upon the value of the rights and property of the state used and the services of the state rendered, which shall be fixed for terms of not exceeding ten years, and be readjustable at the end of any term. Unsanitary conditions shall not be created or continued by any such public works.

Section 4. The legislature may authorize the use by the city of New York for its municipal water supply of lands now belonging to the state located in the towns of Hurley and Shandaken in the county of Ulster and in the town of Lexington in the county of Greene, for just compensation.

Section 5. The legislature shall annually make provision for the purchase of real property within the Adirondack and Catskill parks as defined by law, the reforestation of lands and the making of boundary and valuation surveys.

Section 6. A violation of any of the provisions of this article may be restrained at the suit of the people or, with the consent of the supreme court in appellate division, on notice to the attorney-general at the suit of any citizen.

ARTICLE VIII.

Section 1. The supreme court is continued with general jurisdiction in law and equity, subject to such appellate jurisdiction of the court of appeals as now is or may be prescribed by law not inconsistent with this article. The existing judicial districts of the state are continued until changed as hereinafter provided. The supreme court shall consist of the justices in office on the first day of January, one thousand nine hundred and sixteen, and successors of the three justices transferred to the court of appeals as in this article provided, and of two additional justices who shall reside in and be chosen by the electors of the first judicial district, and their successors, together with such additional justices as may be authorized by the legislature pursuant to the provisions of this article. The successors of said justices shall be chosen by the electors of their respective judicial districts. The legislature may alter the judicial districts once after every federal census or state enumeration and thereupon reapportion the justices to be thereafter elected in the districts so altered. The legislature may from time to time further increase the number of justices in any judicial district except that the number of justices in the first, second and ninth districts shall not be thereby increased to exceed one justice for each eighty thousand, or fraction

over forty thousand of the population thereof, as shown by the last federal or state census or enumeration, and except that the number of justices in any other district shall not be increased to exceed one justice for each sixty thousand or fraction over thirty-five thousand of the population thereof as shown by the last federal or state census or enumeration.

Section 2. The present division of the state into four judicial departments is continued. Once every ten years the legislature may alter the judicial departments, but without increasing the number thereof. They shall be bounded by county lines, and be compact and equal in population as nearly as may be. The appellate divisions of the supreme court are continued and shall consist of not less than ten nor more than twelve justices in the first department, seven justices in the second department and five justices in each of the other departments. The justices heretofore designated shall continue to sit in the appellate divisions until the terms of their designations respectively expire. The appellate division in the first department may sit in two parts, in which case the presiding justice shall assign the justices who from time to time shall sit in each part. The presiding justice may preside in either part and he shall designate the justice to preside in either part when he is not present. In each appellate division or part thereof four shall constitute a quorum, and the concurrence of three shall be necessary to a decision. No more than five justices shall sit in any case.

The Governor shall designate the presiding justice of each department, who shall act as such during his term of office and shall be a resident of the department. The other justices shall be designated by the Governor from all the justices elected to the supreme court for terms of five years or the unexpired portions of their respective terms of office, if less than five years. From time to time as the terms of the designations expire, or vacancies occur, the Governor shall make new designations. A majority of the justices so designated to sit in the appellate division, in each department shall be residents of the department. Ten justices shall be designated to sit in the appellate division in the first department, but in case the presiding justice thereof at any time shall certify to the Governor that the interests of justice so require the Governor shall designate two additional justices to sit therein. In case of the absence or inability to act of a justice of any appellate division the presiding justice thereof may assign any of the justices of the supreme court to sit in the appellate division during such absence or inability, but no justice shall be so designated to sit longer than four months in any year. In case the presiding justice of any appellate division shall certify to the

Governor that one or more additional justices are needed for the speedy disposition of the business before it the Governor shall designate such additional justice or justices. Whenever the appellate division in any department shall be unable to dispose of its business within a reasonable time, a majority of the presiding justices of the several departments at a meeting called by the presiding justice of the department in arrears shall transfer such number of the pending appeals as the presiding justices may determine to be necessary from such department to any other department for hearing and determination. No justice of the appellate division shall, within the department to which he may be designated to perform the duties of an appellate justice, exercise any of the powers of a justice of the supreme court, other than those of a justice out of court, and those pertaining to the appellate division or to the hearing and decision of motions submitted by consent of counsel, but any such justice, when not actually engaged in performing the duties of such appellate justice in the department to which he is designated, may hold any term of the supreme court and exercise any of the powers of a justice of the supreme court in any county or judicial district in any other department of the State. The appellate division, except as herein provided, shall have the jurisdiction now exercised by it and such additional jurisdiction as may be conferred by the Legislature. On appeals from judgments of conviction in criminal cases, the appellate division or the appellate term as the case may be may reduce the sentence imposed by the trial court or judge. It shall have power to appoint and remove a reporter. The justices of the appellate division in each department shall have power to fix the times and places for holding the terms of the supreme court therein, and to assign the justices in the departments to hold such terms.

Section 3. There shall be an appellate term of the supreme court in the first and in the second department consisting of not less than three nor more than five justices of the supreme court to be designated annually by the appellate division of the supreme court in such departments respectively. Such appellate divisions respectively may designate justices to sit in the appellate term during the temporary disability of any of the justices previously designated. Three shall constitute a quorum, and the concurrence of a majority of the justices sitting shall be necessary to a decision. All appeals from judgments and orders in civil cases made by county courts within such departments, and all appeals from judgments and orders made by the city court of the city of New York, the municipal court of the city of New York, the court of special sessions of the city of New York, as such courts now

exist, or as hereafter consolidated or reorganized pursuant to this article, and by all other inferior local courts, except courts held by justices of the peace, city magistrates' courts, and courts of special sessions held by one city magistrate only, within such departments, shall be heard at the appellate term. The legislature may enlarge or restrict the jurisdiction of the appellate term. Appeals to the appellate division from judgments or orders of the appellate term may be taken as of right only when the appellate term on reversing or modifying a judgment makes new findings of fact and renders judgment thereon. Appeals to the appellate division also may be allowed by the proper appellate division.

Section 4. No judge or justice shall sit in the appellate term, appellate division or in the court of appeals in review of a decision made by him or by any court of which he was at the time a sitting member. The testimony in equity cases shall be taken in like manner as in cases at law; and, except as herein otherwise provided, the legislature shall have the same power to alter and regulate the jurisdiction and proceedings in law and in equity that it has heretofore exercised.

Section 5. The official terms of the justices of the supreme court shall be fourteen years from and including the first day of January next after their election. When a vacancy shall occur otherwise than by expiration of term in the office of justice of the supreme court the same shall be filled for a full term, at the next general election, happening not less than three months after such vacancy occurs; and, until the vacancy shall be so filled, the governor by and with the advice and consent of the senate, if the senate shall be in session, or if not in session the governor, may fill such vacancy by appointment, which shall continue until and including the last day of December next after the election at which the vacancy shall be filled.

Section 6. To secure a more simple, speedy and effective administration of justice, it shall be the duty of the legislature to act with all convenient speed upon the report of the board of statutory consolidation transmitted to the legislature by the governor on the twenty-first day of April, one thousand nine hundred and fifteen, and to enact a brief and simple civil practice act and to adopt a separate body of civil practice rules for the regulation of procedure in the court of appeals, supreme court and county courts. The legislature may make the civil practice rules or any part thereof applicable to such other courts as it may provide. Thereafter, from time to time, at intervals of not less than five years, the legislature may appoint a commission to consider and report what changes, if any, there should be in the law and rules governing civil procedure. The legislature shall act on the report of each

such commission by a single bill, and the legislature shall not otherwise, or at any other time, enact any law prescribing, regulating or changing the civil procedure in the court of appeals, supreme court or county courts, unless the judges or justices empowered to make and amend civil practice rules shall certify that legislation is necessary.

After the adoption of the civil practice rules by the legislature under the requirements of the first paragraph of this section, the power to alter and amend such rules and to make, alter and amend civil practice rules shall vest and remain in the courts of the state to be exercised by the judges of the court of appeals and the justices of the appellate divisions of the supreme court, or by such judges or justices of the court of appeals, the supreme court and the county courts as the legislature shall provide.

Section 7. The court of claims is continued and shall be a court of record. It shall consist of the three judges now in office, who shall hold their offices until the expiration of their respective terms, and their successors who shall be appointed by the governor by and with the advice and consent of the senate and who shall hold office for nine years. The legislature may further increase the number of judges of the court of claims by permanent or temporary appointment but not to exceed five in all. The additional judges heretofore appointed shall continue to serve until the first day of January, one thousand nine hundred and eighteen, or such earlier date as shall be determined pursuant to law. The court shall have power to appoint and remove a clerk and such court stenographers and attendants as the legislature may provide. The judges shall continue to receive from the state their present compensation and allowances until the legislature shall otherwise provide. The court shall have the jurisdiction now exercised by it and such additional jurisdiction to hear and determine claims against the state or between conflicting claimants as the legislature may provide. The judges of the court may separately take testimony in relation to any claim, but no award shall be made except by a majority of the whole court. The court may establish rules to govern its own procedure.

Section 8. Supreme court commissioners may be appointed as hereinafter provided, one or more of whom may be designated by the court to determine the compensation to be paid whenever private property is taken for a public use in the judicial department or district for which they shall have been appointed, when such compensation is not made by the state, and who also may respectively be designated as referee whenever issues are properly referred for determination or report, and who shall perform such other or further duties as may be devolved upon them by special

order or rule of court by the appellate division or by the civil practice rules. The respective appellate divisions in the first and second judicial departments from time to time may appoint for each of the counties therein within the city of New York such commissioners as they deem necessary and, with the approval of the board of estimate and apportionment or its successors, fix their compensation which shall be uniform in each county and a charge against the city of New York. The legislature may at any time authorize the appointment of supreme court commissioners in the third and fourth judicial departments and in the counties in the second department not within the city of New York. Such commissioners shall be members of the bar of not less than ten years standing. They shall not practice as attorneys or counselors in any court of this state or of the United States. They shall hold office during the pleasure of the respective appellate divisions by which they shall have been appointed. Supreme court commissioners during their continuance in office shall not hold any other office or public trust.

Section 9. The court of appeals is continued. It shall consist of the chief judge and associate judges now in office, who shall hold their offices until the expiration of their respective terms, and their successors, who shall be chosen by the electors of the state, and of the three justices of the supreme court now serving as associate judges of the court of appeals by designation by the governor, who shall be associate judges of the court of appeals until the expiration of the terms for which they respectively were elected justices of the supreme court, and their successors who shall be chosen by the electors of the state. The official terms of the chief judge and associate judges shall be fourteen years from and including the first day of January next after their election. No more than seven judges shall sit in any case. Five members of the court shall constitute a quorum, and the concurrence of four shall be necessary to a decision. The court shall have power to appoint and to remove its reporter, clerk and attendants. In case of the temporary absence or inability to act of any judge of the court of appeals, the court may designate any justice of the supreme court to serve as associate judge of the court of appeals, during such absence or inability to act, but for a period not exceeding four months in any year. For the purpose of disposing with reasonable speed of the accumulation of causes now pending in the court of appeals, the court on or before the first day of March, one thousand nine hundred and sixteen, shall designate not less than four nor more than six justices of the supreme court to serve as associate judges of the court of appeals until the causes pending on the calendar shall be reduced to one hundred but not later than the thirty-first day of December, one thousand nine hundred and seventeen,

when they shall return to the supreme court. While serving in the court of appeals, the justices so designated shall be relieved of their duties as justices of the supreme court. During such period the court of appeals shall sit in two parts, each of which shall consist of not more than seven judges, five of whom shall constitute a quorum, the concurrence of four being necessary to a decision. The chief judge shall from time to time designate the associate judges of the court of appeals and the justices of the supreme court serving as associate judges of the court of appeals to sit in the respective parts of the court, in such manner that the justices of the supreme court so designated shall be distributed as equally as may be between the two parts. The chief judge may preside in either part when he is not present. The causes pending in the court of appeals shall be distributed by the chief judge as nearly equally as may be between the two parts of the court. The court of appeals shall cause a calendar of appeals pending therein to be made and published at least once in each year. Whenever on the first day of January in any year after the present accumulation of causes in the court of appeals shall have been disposed of as above provided, there shall be more than five hundred causes pending undisposed of on the calendar, the court shall in the manner above provided designate justices of the supreme court to serve as associate judges of the court of appeals, and shall sit in two parts; the pending causes shall be distributed between the parts for disposition until the number of causes pending on the calendar shall be reduced to one hundred, but not later than until the expiration of one year from the date of such designations, whereupon the justices so designated shall return to the supreme court.

In case of the death, resignation or other disability of any of the justices of the supreme court designated to serve as associate judges of the court of appeals as in this article provided, the court of appeals shall designate a justice of the supreme court to serve in his place in like manner as if originally so designated. Each of the justices of the supreme court while serving as associate judge of the court of appeals as herein provided shall receive from the state the same compensation as the elected associate judges of the court of appeals. Upon the termination of the designation of a justice of the supreme court as associate judge of the court of appeals who when so designated was a justice of an appellate division, he shall return to such appellate division unless the term of his designation thereto shall have expired and shall not have been renewed by the governor. The appellate division may designate other justices of the supreme court to sit in the appellate division during the absence of regularly assigned justices of such division serving

as associate judges of the court of appeals, in case the business of the appellate division shall render such action necessary.

Section 10. When a vacancy shall occur otherwise than by expiration of term, in the office of chief or associate judge of the Court of Appeals, the same shall be filled, for a full term, at the next general election happening not less than three months after such vacancy occurs; and until the vacancy shall be so filled, the Governor, by and with the advice and consent of the Senate, if the Senate shall be in session, or if not in session the Governor may fill such vacancy by appointment. If any such appointment of chief judge shall be made from among the associate judges, a temporary appointment of associate judge shall be made in like manner; but in such case, the person appointed chief judge shall not be deemed to vacate his office of associate judge any longer than until the expiration of his appointment as chief judge. The powers and jurisdiction of the court shall not be suspended for want of appointment or election, when the number of judges is sufficient to constitute a quorum. All appointments under this section shall continue until and including the last day of December next after the election at which the vacancy shall be filled.

Section 11. After the last day of December, one thousand nine hundred and fifteen, the jurisdiction of the Court of Appeals, except where the judgment is of death, or where the appellate division on reversing or modifying a judgment makes new findings of fact and renders judgment thereon, shall be limited to the review of questions of law. Appeals may be taken as of right to the Court of Appeals in the following cases only:

(1) Where the judgment is of death;

(2) From a judgment or order entered upon the decision of an appellate division of the Supreme Court which finally determines an action or special proceeding where is directly involved the construction of the Constitution of the State or of the United States, or where one or more of the justices who heard the case dissents from the decision of the court, or where the judgment of the trial court is reversed or modified;

(3) From an order of an appellate division of the supreme court granting a new trial where the appellant stipulates that upon affirmance judgment absolute shall be rendered against him.

The court of appeals may, however, allow an appeal in any case where in its opinion a question of law is involved, which ought to be reviewed.

The legislature may further restrict the jurisdiction of the court of appeals and the right of appeal thereto, but the right to appeal shall not depend upon the amount involved.

The provisions of this section shall not apply to appeals taken

to the court of appeals before the last day of December, one thousand nine hundred and fifteen, but the judgments or orders appealed from shall be reviewed under existing provisions of law.

The court of appeals may determine the qualifications and prescribe the rules regulating the admission to practice of attorneys and counselors in the courts of the state.

Section 12. The judges of the court of appeals and the justices of the supreme court shall not hold any other office or public trust. All votes for any of them, for any other than a judicial office, given by the legislature or the people, shall be void.

Section 13. Judges of the court of appeals and justices of the supreme court may be removed by concurrent resolution of both houses of the legislature, if two-thirds of all the members elected to each house concur therein. All other judicial officers, except justices of the peace and judges or justices of inferior courts not of record, may be removed by the senate, on the recommendation of the governor, if two-thirds of all the members elected to the senate concur therein. But no officer shall be removed by virtue of this section except for cause, which shall be entered on the journals, nor unless he shall have been served with a statement of the cause alleged, and shall have had an opportunity to be heard. On the question of removal, the yeas and nays shall be entered on the journal.

Section 14. No person shall hold the office of judge, justice of any court or surrogate longer than until and including the last day of December next after he shall be seventy years of age. Each justice of the supreme court shall receive from the state an annual salary of ten thousand dollars. Those assigned to the appellate divisions in the third and fourth departments shall each receive in addition the sum of two thousand dollars, and presiding justices thereof the sum of two thousand five hundred dollars per year. The justices now in office or hereafter elected in the first and second judicial departments shall continue to receive from their respective cities, counties or districts, as now provided by law, such additional compensation as will make their aggregate compensation what they are now receiving. Those justices elected in any judicial department other than the first or second, and assigned to the appellate divisions of the first or second departments shall, while so assigned, receive from those departments respectively, as now provided by law, such additional sum as is paid to the justices of those departments. A justice elected in the third or fourth department assigned by the appellate division or designated by the governor to hold a trial or special term in the first or second judicial department shall receive in addition twenty dollars per day for expenses while actually so engaged in holding such term, which shall be paid

by the state and charged upon the judicial district where the service is rendered. The compensation herein provided shall be in lieu of and shall exclude all other compensation and allowance to such justices for expenses of every kind and nature whatsoever. The provisions of this section shall apply to the judges and justices now in office and to those hereafter elected. Except in the case of the consolidation of the offices of county judge and surrogate, or to make the compensation of the judges of the court of appeals equal to that of any justice of the supreme court, the compensation of a judge or justice of any court of record in the state shall be neither increased nor decreased during the term of office for which he was elected or appointed.

Section 15. The assembly shall have the power of impeachment, by a vote of a majority of all the members elected. The court for the trial of impeachments shall be composed of the president of the senate, the senators, or the major part of them, and the judges of the court of appeals, or the major part of them. On the trial of an impeachment against the governor or lieutenant-governor, neither the lieutenant-governor nor the temporary president of the senate shall act as a member of the court. The court for the trial of impeachments may order all or any part of the testimony to be taken and reported by a committee composed of members of the court, except that the impeached officer must be allowed to testify before the court if he so desire. No judicial officer shall exercise his office, after articles of impeachment against him shall have been preferred to the senate, until he shall have been acquitted. Before the trial of an impeachment the members of the court shall take an oath or affirmation truly and impartially to try the impeachment according to the evidence, and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment in cases of impeachment shall not extend further than to removal from office, or removal from office and disqualification to hold and enjoy any office of honor, trust or profit under this state; but the party impeached shall be liable to indictment and punishment according to law.

Section 16. The existing county courts are continued, and the judges thereof now in office shall hold their offices until the expiration of their respective terms except that the county courts in the counties of Kings, Queens, Richmond and Bronx shall be abolished and the county judges transferred as provided in this article. The number of county judges in any county may be increased, from time to time, by the legislature, to such number that the total number of county judges in any one county shall not exceed one for every two hundred thousand, or major fraction thereof, of the population of such county. The additional county

judges whose offices may be created by the legislature shall be chosen at the general election held in the first odd-numbered year after the creation of such office. All county judges, including successors to existing judges, shall be chosen by the electors of the counties for the term of six years from and including the first day of January following their election. Except as in this article otherwise provided county courts shall have the powers and jurisdiction now prescribed by the legislature, and also original jurisdiction in actions for the recovery of money only, where all the defendants reside in the county, and in which the complaint demands judgment for a sum not exceeding three thousand dollars. The legislature may hereafter enlarge or restrict the jurisdiction of the county courts, provided, however, that their jurisdiction shall not be so extended as to authorize an action therein for the recovery of money only, in which (1) the sum demanded exceeds three thousand dollars, or (2) in which any person not a resident of the county is a defendant, unless such defendant have an office for the transaction of business within the county and the cause of action arose therein. Every county judge and special county judge in counties having the same shall perform such duties as may be required by law. His salary shall be established by law, payable out of the county treasury. A county judge of any county may hold county courts in another county when requested by the judge of such other county.

Section 17. The existing surrogates' courts are continued, and the surrogates now in office shall hold their offices until the expiration of their terms. Their successors shall be chosen by the electors of their respective counties, and their terms of office shall be six years, except in the county of New York, where they shall continue to be fourteen years. Surrogates and surrogates' courts shall have the jurisdiction and powers now prescribed by the Legislature until otherwise provided by law. The county judge shall be surrogate of his county, except where a separate surrogate has been or shall be elected. In counties having a population exceeding forty thousand, wherein there is no separate surrogate, the Legislature may provide for the election of a separate officer to be surrogate, whose term of office shall be six years. When the surrogate shall be elected as a separate officer his salary shall be established by law, payable out of the county treasury. Vacancies occurring in the office of judge of the court of general sessions of the city of New York, judge of the city court of New York, county judge, special county judge or surrogate shall be filled in the same manner as like vacancies occurring in the supreme court. For the relief of surrogates' courts the Legislature may confer upon the supreme court in any county having a population exceeding four

hundred thousand, the powers and jurisdiction of surrogates. A surrogate of any county may hold a surrogate's court in any other county when requested by the surrogate of such other county. The Legislature may at any time consolidate the offices of county judge and surrogate in any county.

Section 18. The Legislature may, on application of the board of supervisors, provide for the election of local officers, not to exceed two in any county, to discharge the duties of county judge and of surrogate, in cases of their inability or of a vacancy, and in such other cases as may be provided by law, and to exercise such other powers in special cases as are or may be provided by law.

Section 19. The electors of the several towns shall, at their annual town meetings, or at such other time and in such manner as the Legislature may direct, elect justices of the peace, whose term of office shall be four years. In case of an election to fill a vacancy occurring before the expiration of a full term, they shall hold for the remainder of the unexpired term. Their number, classification and duties shall be regulated by law. Justices of the peace and judges or justices of inferior courts not of record, and their clerks, may be removed for cause, after due notice and an opportunity of being heard by such courts as are or may be prescribed by law. Justices of the peace, city magistrates and all other judicial officers whose election or appointment is not otherwise provided for in this article may be elected in the several cities of this State, or in any boroughs contained within a city, or within districts created for that purpose or may be appointed by some local authorities of the several cities, in such manner and with such powers and for such terms, respectively, as are or may be prescribed by law. The boards of supervisors or other officials exercising power now vested in such boards may fix the compensation to be paid or allowed to justices of the peace in towns and cities for their services in criminal matters.

Section 20. The Court of General Sessions in and for the city and county of New York is continued, and from and after the first day of January, one thousand nine hundred and seventeen, it shall have the same jurisdiction and powers throughout the city of New York, under the name of the Court of General Sessions of the city of New York, as it now possesses within the county of New York. It shall consist of the judges then in office and the judges transferred thereto by this section, all of whom shall continue to be judges of the Court of General Sessions of the city of New York for the remainder of the terms for which they respectively were elected or appointed. The County Courts of Kings, Queens, Richmond and Bronx are abolished from and after the first day of January, one thousand nine hundred and

seventeen. The judges of such courts then in office shall for the remainder of the terms for which they were elected or appointed, be judges of the Court of General Sessions of the city of New York. The successors to the judges who were elected or appointed as judges of the Court of General Sessions in and for the city and county of New York shall be elected by the electors within the county of New York, and the successors to the judges who were elected or appointed as judges of the County Courts of Kings, Queens, Richmond and Bronx, respectively, shall be elected by the electors within each of such respective counties, so that the Court of General Sessions of the city of New York shall consist of seven judges resident in and elected by the electors within the county of New York, five judges resident in and elected by the electors in the county of Kings, and one judge resident in and elected by the electors in each of the counties of Queens, Richmond and Bronx. The Legislature may in its discretion authorize the election of one additional judge to reside in and be chosen by the electors in the county of Bronx. The judges who were elected or appointed as judges of the Court of General Sessions in and for the city and county of New York, and the judges elected or appointed as judges of the County Court of the counties of Kings, Queens, Richmond and Bronx, shall until the expiration of the term for which they were appointed or elected, be respectively paid by the city, the compensation now fixed by law. The successors of all of the judges of the court of general sessions of the city of New York shall be elected as hereinafter provided for a term of fourteen years, and their compensation shall be fixed by the legislature. The judges of the court of general sessions of the city of New York shall choose one of their own number to be the presiding judge thereof, who shall act as such for a period of five years or until the earlier expiration of his term of office, and who shall be charged with the general administration of the court, and assign the judges to hold the terms thereof, subject to such regulations as the presiding justices of the appellate divisions of the supreme court in the first and second departments shall from time to time prescribe. The judges shall have power to appoint and remove a clerk, who shall keep his office at a place to be designated by the court. All criminal prosecutions and proceedings on the first day of January, one thousand nine hundred and seventeen, pending in such county courts shall thereupon be transferred to the court of general sessions of the city of New York for hearing and determination at terms held within the counties in which the same are pending. Until the legislature shall otherwise provide the clerk of the court of general sessions in and for the city and county of New York and the chief clerk of the county

court in each of the counties of Kings, Queens, Richmond and Bronx, shall act within his county as clerk of the court of general sessions of the city of New York, and the presiding judge of such court shall make such rules and regulations respecting such clerks' offices and the distribution of the business of the court in the said several counties as from time to time may be expedient.

Section 21. The city court of the city of New York is continued, and from and after the first day of January, one thousand nine hundred and seventeen, it shall have the same jurisdiction and power throughout the city of New York, under the name of the city court of New York, as it now possesses within the county of New York and the county of Bronx and original jurisdiction in actions for the recovery of money only in which the complaint demands judgment for a sum not exceeding three thousand dollars. Such courts shall have likewise the equity jurisdiction now possessed by county courts but such jurisdiction shall be exercised only within the respective counties of such city by the judges elected within such counties. It shall consist of the judges then in office who shall continue to be judges of the court for the remainder of the terms for which they respectively were elected or appointed, and the additional judges to be elected as provided in this section. The judges who were elected or appointed as judges of the city court of the city of New York, until the expiration of the terms for which they were respectively elected or appointed, shall be paid the salaries now fixed by law for such judges. Their successors shall be elected by the electors of the county of New York and shall hold office for ten years. There shall also be five additional judges, two of whom shall reside in and be chosen by the electors of the county of Kings, and one of whom shall reside in and be chosen by the electors in each of the counties of Bronx, Richmond and Queens, all of whom shall be elected at the general election in November, one thousand nine hundred and sixteen, and they and their successors, who shall be chosen in like manner, shall hold office for ten years. Until the legislature shall otherwise provide the judge of the city court chosen in the county of Richmond shall be surrogate of that county. The legislature may provide for a surrogate for the county of Richmond. The legislature may in its discretion authorize the election of two additional judges, one to reside in and be chosen by the electors of the respective counties of Bronx and Kings. The judges elected as in this section provided shall receive from the city a compensation to be fixed by the legislature. The judges of the city court of New York shall choose one of their own number to be the presiding

judge thereof who shall be charged with the general administration of the court and assign the judges to hold the terms thereof, subject to such regulations as the presiding justices of the appellate divisions of the supreme court in the first and second departments shall from time to time prescribe. The judges shall have power to appoint and remove a clerk, who shall keep his office at a place to be designated by the court. All civil actions or proceedings on the first day of January, one thousand nine hundred and seventeen, pending in the county courts of the counties of Kings, Queens, Richmond and Bronx, respectively, shall thereupon be transferred to the city court of New York for hearing and determination, which court for the purpose only of such hearing and determination and the enforcement of the judgments rendered thereon shall have and exercise the jurisdiction previously vested in the respective county courts from which such cases are so transferred, at terms held within the counties in which the same are pending. Until the legislature shall otherwise provide, the clerk of the city court of the city of New York and the chief clerk of the county court in each of the counties of Kings, Queens, Richmond and Bronx, shall act within his county as clerk of the city court of New York, and the presiding judge of the court shall make such rules and regulations respecting the clerks' offices and the distribution of the business of the court in the said several counties as from time to time may be expedient, subject to regulations of the presiding justices of the first and second departments as aforesaid.

Section 22. Inferior local courts of civil and criminal jurisdiction may be established by the legislature, but no inferior local court created after the first day of January, one thousand eight hundred and ninety-five, shall be a court of record. Except as herein provided the legislature shall not hereafter confer upon any inferior local court of its creation any equity jurisdiction or any greater jurisdiction in other respects than is conferred upon county courts by or under this article.

The legislature may, however, provide that the territorial jurisdiction of any inferior local court now existing or hereafter established in any city or village or of justices of the peace in cities shall extend throughout the county in which such court or justice is located, and also throughout such city or village irrespective of town or county lines. The legislature may also create civil divisions consisting of not to exceed three contiguous towns or parts thereof for the purpose of establishing therein inferior local courts having territorial jurisdiction throughout the county or counties in which such towns are situated. The legislature may confer upon any inferior local court power to try without a jury

offenses of the grade of misdemeanor. The legislature may establish children's courts, and courts of domestic relations, as separate courts, or parts of existing courts or courts hereafter to be created, and may confer upon them such equity and other jurisdiction as may be necessary for the correction, protection, guardianship and disposition of delinquent, neglected or dependent minors, and for the punishment and correction of adults responsible for or contributing to such delinquency, neglect or dependency, and of all persons legally chargeable with the support of a wife or children who abandoned or neglect to support either. In the exercise of such jurisdiction such courts may hear and determine such causes, with or without a jury, except those involving a felony. Except as in this article otherwise provided, all judicial officers shall be elected or appointed at such times and in such manner as the legislature may direct.

Section 23. Clerks of the several counties shall be clerks of the supreme court, with such powers and duties as shall be prescribed by law. The justices of the appellate division in each department shall have power to appoint and to remove a clerk who shall keep his office at a place to be designated by such justices. The clerk of the court of appeals shall keep his office at the seat of government. The clerk of the court of appeals and the clerks of the appellate division shall receive compensation to be established by law and paid out of the public treasury.

Section 24. No judicial officer, except justices of the peace, shall receive to his own use any fees or perquisites of office; nor shall any judge of the court of appeals, or justice of the supreme court, or any county judge or surrogate hereafter elected in a county having a population exceeding one hundred and twenty thousand, practice as an attorney or counselor in any court of record in this state, or act as referee. The legislature may impose a similar prohibition upon county judges and surrogates in other counties. No one shall be eligible to the office of judge of the court of appeals, justice of the supreme court, or, except in the county of Hamilton, to the office of county judge or surrogate, who is not an attorney and counselor of this state.

Section 25. The legislature shall provide for the speedy publication of all statutes, civil practice rules and rules of court, and the collection, compilation and publication annually of the civil and criminal judicial statistics of the state, and shall regulate the reporting of the decisions of the courts; but all laws and judicial decisions shall be free for publication by any person.

Section 26. Justices of the peace and other local judicial officers provided for in sections nineteen and twenty-two, in office

when this article takes effect, shall hold their offices until the expiration of their respective terms.

Section 27. Courts of special sessions and inferior local courts of similar character shall have such jurisdiction of offenses of the grade of misdemeanors as may be prescribed by law.

Section 28. Commissioners of jurors now in office shall hold their offices until the expiration of their respective terms. The legislature may provide for the appointment of a commissioner of jurors in any county; in a county in the first and second judicial districts, by the respective appellate divisions of the supreme court embracing those districts, and in a county in the other judicial districts, by the justices of the supreme court resident in the judicial district embracing such county. The legislature shall define the duties of commissioners of jurors, fix their terms of office and their compensation which shall be a county charge.

Section 29. Laws may be passed to provide for a system of judicial authentication, registration and guaranty by the state, or by any county thereof, of titles to real property, the determination of adverse claims to and interests therein, and the establishment by means of fees or otherwise of assurance funds to make such system operative. Such administrative powers as are necessary may be conferred on existing courts of record.

ARTICLE IX.

Section 1. The credit of the state shall not in any manner be given or loaned to or in aid of any individual, association or corporation.

Section 2. The state may contract debts in anticipation of the receipt of taxes and revenues, direct or indirect, for the purposes and within the amounts of appropriations theretofore made; bonds or other obligations for the moneys so borrowed shall be issued as may be provided by law, and shall with the interest thereon be paid from such taxes and revenues within one year from the date of issue.

Section 3. In addition to the above limited power to contract debts, the state may contract debts to repel invasion, suppress insurrection, or defend the state in war; but the money arising from the contracting of such debts shall be applied to the purpose for which it was raised, or to repay such debts, and to no other purpose whatever.

Section 4. Except the debts specified in sections two and three of this article, no debt shall be hereafter contracted by or in behalf of this state, unless such debt shall be authorized by law, for some single work or object, to be distinctly specified therein.

On the final passage of such bill in either house of the legislature, the question shall be taken by yeas and nays, to be duly entered on the journals thereof, and shall be: "Shall this bill pass and ought the same to receive the sanction of the people?" No such law shall take effect until it shall, at a general election, have been submitted to the people, and have received a majority of all the votes cast for and against it at such election nor shall it be submitted to be voted on within three months after its passage nor at any general election when any other law, or any bill shall be submitted to be voted for or against. The legislature may, at any time after the approval of such law by the people, if no debt shall have been contracted in pursuance thereof, repeal the same; and may at any time by law forbid the contracting of any further debt or liability under such law.

Except the debts specified in sections two and three of this article, all debts contracted by the state after the second day of November, one thousand nine hundred and fifteen, pursuant to an authorization therefor, heretofore or hereafter made and each portion of any such debt from time to time so contracted irrespective of the terms of such authorization, shall be paid in equal annual instalments, the first of which shall be payable not more than one year, and the last of which shall be payable not more than fifty years, after such debt or portion thereof shall have been contracted. No such debt hereafter authorized shall be contracted for a period longer than that of the probable life of the work or object for which the debt is to be contracted, to be determined by general laws, which determination shall be conclusive.

The legislature may from time to time alter the rate of interest to be paid upon any state debt which has been or may be authorized pursuant to the provisions of this section or upon any part of such debt, provided, however, that the rate of interest shall not be altered upon any part of such debt or upon any bond or other evidence thereof which has been or shall be created or issued before such alteration.

The money arising from any loan creating such debt or liability shall be applied to the work or object specified in the act authorizing such debt or liability, or for the payment of such debt or liability and for no other purpose whatever.

Section 5. The sinking funds provided for the payment of interest and the extinguishment of the principal of the debts of the state heretofore contracted shall be continued; they shall be separately kept and safely invested and neither of them shall be appropriated or used in any manner other than for such payment and extinguishment as hereinafter provided. The comptroller shall each year appraise the securities held for investment in each

of such funds at their fair market value not exceeding par. He shall then determine and certify to the legislature the amount of each of such funds and the amounts which, if thereafter annually contributed to each such fund, would, with the fund and with the accumulations thereon and upon the contributions thereto, computed at the rate of three per centum per annum, produce at the date of maturity the amount of the debt to retire which such fund was created, and the legislature shall thereupon appropriate as the contribution to each such fund for such year at least the amount thus certified.

If the income of any such fund in any year is more than a sum which, if annually added to such fund would, with the fund and its accumulations as aforesaid, retire the debt at maturity, the excess income may be applied to the interest on the debt for which the fund was created.

After any sinking fund shall equal in amount the debt for which it was created no further contribution shall be made thereto except to make good any losses ascertained at the annual appraisals above mentioned, and the income thereof shall be applied to the payment of the interest on such debt. Any excess in such income not required for the payment of interest may be applied to the general fund of the state.

The legislature may also by general laws provide means and authority whereby outstanding bonds of the state, for which sinking funds are provided, may be exchanged at par for cancellation, for serial bonds of the form authorized under section four of this article, upon such terms and conditions as to interest and otherwise as it may in its discretion authorize or determine, except that the debt as thus refunded shall finally mature no later and at no greater comparative cost to the state than the original debt; the determination of the legislature as to such comparative cost shall be conclusive. No further contributions to the respective sinking funds shall be made on account of bonds so exchanged and the proportion of any such sinking fund which the amount of the bonds so exchanged shall bear to the amount of bonds outstanding of the same issue may be appropriated, as required, for the payment of the substituted serial bonds.

Section 6. The legislature shall annually provide by appropriation for the payment of the interest upon and instalments of principal of all debts created on behalf of the state except those contracted under section two of this article, as the same shall fall due, and for the contribution to all of the sinking funds heretofore created by law, of the amounts annually to be contributed under the provisions of section five of this article. If at any time the

legislature shall fail to make any such appropriation, the comptroller shall set apart from the first revenues thereafter received, applicable to the general fund of the state, a sum sufficient to pay such interest, instalments of principal, or contributions to such sinking fund, as the case may be, and shall so apply the moneys thus set apart. The comptroller may be required to set aside and apply such revenues as aforesaid, at the suit of any holder of such bonds.

Section 7. Debts hereafter authorized for the improvement of highways shall be created only in the manner provided in section four of this article. No provision of this article shall be deemed to impair or affect the validity of any debt of the state heretofore contracted or any right or obligation heretofore created between the state and any of its civil divisions.

Section 8. The moneys authorized to be raised by the sale of highway bonds pursuant to the law approved by vote of the people at the general election held in the year one thousand nine hundred and twelve, which have been apportioned to certain counties in excess of the sums, to be determined by the comptroller, which are or will be required to construct and improve the highways theretofore determined by general laws to be constructed and improved in such counties, shall be applied by the superintendent of public works after appropriation by the legislature to the construction and improvements of such state routes and portions thereof, as were defined by law when such bonds were authorized, and located outside of such counties, as he may deem expedient.

Section 9. Neither the legislature, canal board, nor any person or persons acting in behalf of the state, shall audit, allow, or pay any claim which, as between citizens of the state, would be barred by lapse of time. This provision shall not be construed to repeal any statute fixing the time within which claims shall be presented or allowed, nor shall it extend to any claims duly presented within the time allowed by law, and prosecuted with due diligence from the time of such presentment. But if the claimant shall be under legal disability, the claim may be presented within two years after such disability is removed.

Section 10. The legislature shall not sell, lease or otherwise dispose of the Erie canal, the Oswego canal, the Champlain canal, the Cayuga and Seneca canal, the Black River canal, or canal terminals heretofore or hereafter constructed, nor shall any easement in or incumbrance on such canals or terminals be created; but they shall remain the property of the state and under its management forever. When necessary in the opinion of the superintendent of public works, easements in canal lands may be granted for purposes of bridge construction, provided that such easements shall not interfere with or impair the use of the canals.

The canals to which such prohibition applies shall be those now known as the Erie, the Oswego, the Champlain, the Cayuga and Seneca, and the Black River canals until the barge canal improvement under chapter one hundred and forty-seven of the laws of one thousand nine hundred and three, as heretofore amended, and chapter three hundred and ninety-one of the laws of one thousand nine hundred and nine, as heretofore amended, shall have been completed, when such prohibition shall apply only to the said terminals, the Black River canal, the said improved canals, the portions of existing canals heretofore reserved for barge canal or canal terminal purposes by statute, the existing inland Erie canal from Tonawanda creek to connection with the Black Rock harbor, those portions of the Erie and Champlain canals heretofore reserved by chapter two hundred and forty-three of the laws of one thousand nine hundred and thirteen and canal slips numbers one and two in the city of Buffalo; provided, however, that in the city of Utica that portion of the existing Erie canal between Schuyler and Third streets may be sold or otherwise disposed of on condition that a flow of sufficient water from Schuyler to Third street to feed that portion of the canal east of Third street be maintained. The abandonment, sale or other disposition of canals or canal property shall be under and pursuant to general laws only and such laws shall secure to the state the fair appraised value of the property which may be abandoned and sold. Such general laws may provide for the abandonment of portions of the existing canals which by reason of the completion of parts of the barge canals shall have become unnecessary for purposes of navigation and shall be certified by the superintendent of public works to have become so.

Real property which has been or which may hereafter be appropriated for canal purposes shall be deemed to be held by the state in fee unless expressly taken for temporary purposes.

The leasing of surplus waters of any of the state canals or canal feeders or of any waters impounded by the construction of dams, reservoirs or other structures shall hereafter be pursuant to general laws only, but this provision shall not authorize the use for other than navigation purposes of water diverted from the Black river watershed to feed the Erie canal. No such lease nor the use of waters thereunder shall in any way injure, impair, interfere with, or endanger navigation or the construction, use, maintenance, operation or safety of the canals or of other property of the state. Each lease shall be for a stated period not exceeding thirty years and shall reserve to the state the right, whenever in the opinion of those having charge of the management and operation of the canals the needs of navigation require it, to terminate or suspend

the same and to regulate or alter the amount of water to be used thereunder, together with the corresponding compensation therefor, without incurring liability upon the part of the state.

Section 11. No tolls shall hereafter be imposed on persons or property transported on the canals, but all boats navigating the canals and the owners and masters thereof, shall be subject to such laws and regulations as have been or may hereafter be enacted concerning the navigation of the canals. The legislature shall annually, by equitable taxes, make provision for the expenses of the superintendence and repairs of the canals. All contracts for work or materials on any canal shall be made with the persons who shall offer to do or provide the same at the lowest price, with adequate security for their performance. No extra compensation shall be made to any contractor; but if, from any unforeseen cause, the terms of any contract shall prove to be unjust and oppressive, the canal board may, upon the application of the contractor, cancel such contract.

Section 12. The canals may be improved in such manner as the legislature shall provide by law. A debt may be authorized for that purpose in the mode prescribed by section four of this article, or the cost of such improvement may be defrayed by the appropriation of funds from the state treasury, or by equitable annual tax.

Mr. Wickersham — I move we now adjourn, and continue the reading of the Constitution after the convening of the Convention to-morrow morning at 10 o'clock.

The President — All in favor will say Aye, contrary, No. The motion is agreed to, and the Convention stands adjourned until 10 o'clock to-morrow morning.

Whereupon, at 10:32 p. m. the Convention adjourned to meet at 10 a. m. Friday, September 10, 1915.

FRIDAY, SEPTEMBER 10, 1915.

The President — The Convention will please be in order. Prayer will be offered by the Rt. Rev. Thomas F. Cusack.

The Rt. Rev. Mr. Cusack — In the name of the Father, and of the Son and of the Holy Ghost, Amen. Oh God of might and wisdom and of justice, through whom authority is rightly administered and laws enacted and judgments decreed, we thank Thee for the help Thou gavest us in our deliberations, and we pray that what we have designed for the public good may tend to the preservation of peace among our citizens and promotion of their

happiness and increase in industry and sobriety and useful knowledge — and may He perpetuate to us the blessings of equal liberty. Our Father, who art in Heaven, hallowed be Thy name, Thy kingdom come, Thy will be done on earth as it is in Heaven. Give us this day our daily bread and forgive us our trespasses as we forgive those who trespass against us, and lead us not into temptation but deliver us from evil, Amen. In the name of the Father, and of the Son and of the Holy Ghost, Amen.

The President — Are there any amendments to be proposed to the Journal as printed and distributed? There being no amendments proposed, the Journal stands approved as printed.

Mr. Wickersham — Mr. President, I suggest the absence of a quorum, and ask that the roll be called.

Mr. Wickersham calls attention to the absence of a quorum. The Secretary will call the roll.

Upon the call of the roll the following delegates responded: Adams, Ahearn, Aiken, Allen, F. C., Angell, Austin, Baldwin, Bannister, Barrett, Bayes, Beach, Bell, Berri, Betts, Blauvelt, Bockes, Brackett, Brenner, Bunce, Burkan, Buxbaum, Byrne, Clearwater, Clinton, Cobb, Coles, Cullinan, Curran, Dahm, Daly, Dennis, Deyo, Dick, Donnelly, Donovan, Dooling, Doughty, Drummond, Dunlap, Dunmore, Dykman, Endres, Eppig, Fancher, Fobes, Fogarty, Foley, Ford, Frank, Gladding, Greff, Griffin, Haffen, Hale, Harawitz, Heaton, Johnson, Jones, Kirby, Landreth, Latson, Law, Leary, Leggett, Lennox, Lincoln, Linde, Lindsay, Low, McKean, Mandeville, Martin, F., Martin, L. M., Marshall, Mathewson, Mealy, Mereness, Nixon, Nye, O'Brian, J. L., O'Brien, M. J., O'Connor, Olcott, Ostrander, Parker, Parsons, Pelletreau, Phillips, S. K., Quigg, Reeves, Rhees, Richards, Rodenbeck, Rosch, Ryan, Ryder, Sanders, Sargent, Saxe, J. G., Schoonhut, Schurman, Sears, Sharpe, Sheehan, Shipman, Slevin, Smith, A. E., Smith, R. B., Smith, T. F., Standart, Steinbrink, Stimson, Stowell, Tierney, Tuck, Unger, Vanderlyn, Wadsworth, Wagner, Ward, Waterman, Webber, C. A., Weber, R. E., Weed, Westwood, Whipple, White, C. J., Wickersham, Wiggins, Williams, Winslow, Wood, Young, C. H., Young, F. L., President.

The President — One hundred and thirty-eight delegates having answered to their names, a quorum of the Convention is present. The Secretary will continue the reading of the Revised Constitution reported by the Committee on Revision.

Mr. Haffen — I desire to state that I have attended every meeting of the session, every session of the Constitutional Convention since the day of its organization on April 6th, and desire to be recorded as having attended and having been present at every one of its sessions.

The President — Notwithstanding all rules of order, that fact will be imputed to Mr. Haffen for righteousness.

The Secretary —

ARTICLE X.

Section 1. The power of taxation shall never be surrendered, suspended or contracted away, except as to the securities of the state or a civil division thereof. Hereafter no exemption from taxation shall be granted except by general laws and upon the affirmative vote of two-thirds of all the members elected to each house.

Section 2. Taxes shall be imposed by general laws and for public purposes only. The legislature shall prescribe how taxable subjects shall be assessed and provide for officers to execute laws relating to the assessment and collection of taxes, any provision of section two of article thirteen of this constitution to the contrary notwithstanding. The legislature shall provide for the supervision, review and equalization of assessments.

Section 3. For the assessment of real property, heretofore locally assessed, the legislature shall establish tax districts, none of which, unless it be a city, shall embrace more than one county. The assessors therein shall be elected by the electors of such districts or appointed by such authorities thereof as shall be designated by law. The legislature may provide that the assessment roll of each larger district shall serve for all the lesser tax districts within its boundaries. No such tax district larger than a town, except a city, shall be established until the law providing therefor shall have been adopted by a vote of a majority of the electors voting thereon in such proposed district at an election for which provision shall be made by law. The legislature may, however, provide for the assessment by state authorities of all the property of designated classes of public service corporations.

ARTICLE XI.

Section 1. Corporations may be formed under general laws; but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the legislature, the objects of the corporation cannot be attained under general laws. All general laws and special acts passed pursuant to this section may be altered from time to time or repealed.

Section 2. Dues from corporations shall be secured by such individual liability of the corporators and other means as may be prescribed by law.

Section 3. The term corporations as used in this article shall be construed to include all associations and joint stock companies

having any of the powers or privileges of corporations not possessed by individuals or partnerships. And all corporations shall have the right to sue and shall be subject to be sued in all courts in like cases as natural persons.

Section 4. The legislature shall, by general law, conform all charters of savings banks, or institutions for savings, to a uniformity of powers, rights and liabilities, and all charters hereafter granted for such corporations shall be made to conform to such general law, and to such amendments as may be made thereto. And no such corporation shall have any capital stock, nor shall the trustees thereof, or any of them, have any interest whatever, direct or indirect, in the profits of such corporation; and no director or trustee of any such bank or institution shall be interested in any loan or use of any money or property of such bank or institution for savings. The legislature shall have no power to pass any act granting any special charter for banking purposes; but corporations or associations may be formed for such purposes under general laws.

Section 5. The legislature shall have no power to pass any law sanctioning in any manner, directly or indirectly, the suspension of specie payments, by any person, association or corporation, issuing bank notes of any description.

Section 6. The legislature shall provide by law for the registry of all bills or notes, issued or put in circulation as money, and shall require ample security for the redemption of the same in specie.

Section 7. The stockholders of every corporation and joint stock association for banking purposes, shall be individually responsible to the amount of their respective share or shares of stock in any such corporation or association, for all its debts and liabilities of every kind.

Section 8. In case of the insolvency of any bank or banking association, the billholders thereof shall be entitled to preference in payment, over all other creditors of such bank or association.

Section 9. Neither the credit nor the money of the state shall be given or loaned to or in aid of any association, corporation or private undertaking. This section shall not, however, prevent the legislature from making such provision for the education and support of the blind, the deaf and dumb, and juvenile delinquents, as to it may seem proper. Nor shall it apply to any fund or property now held, or which may hereafter be held, by the state for educational purposes.

Section 10. No county, city, town or village shall hereafter give any money or property, or loan its money or credit to or in aid of any individual, association or corporation, or become directly or indirectly the owner of stock in, or bonds of, any association or

corporation nor shall any such county, city, town or village be allowed to incur any indebtedness except for county, city, town or village purposes. This section shall not prevent such county, city, town or village from making such provision for the aid or support of its poor as may be authorized by law.

Section 11. No county or city shall be allowed to become indebted for any purpose or in any manner to an amount which, including existing indebtedness, shall exceed ten per centum of the assessed valuation of the real estate of such county or city subject to taxation, as it appeared by the assessment rolls of such county or city on the last assessment for state or county taxes prior to the incurring of such indebtedness; and all indebtedness in excess of such limitation, except such as now may exist, shall be absolutely void, except as herein otherwise provided. No county or city whose present indebtedness exceeds ten per centum of the assessed valuation of its real estate subject to taxation, shall be allowed to become indebted in any further amount until such indebtedness shall be reduced within such limit. This section shall not be construed to prevent the issuing of certificates of indebtedness or revenue bonds issued in anticipation of the collection of taxes for amounts actually contained, or to be contained in the taxes for the year when such certificates or revenue bonds are issued and payable out of such taxes; nor to prevent the city of New York from issuing bonds to be redeemed out of the tax levy for the year next succeeding the year of their issue, provided that the amount of such bonds which may be issued in any one year in excess of the limitations herein contained shall not exceed one-tenth of one per centum of the assessed valuation of the real estate of such city subject to taxation. Nor shall this section be construed to prevent the issue of bonds to provide for the supply of water. All certificates of indebtedness or revenue bonds issued in anticipation of the collection of taxes, which are not retired within five years after their date of issue, and bonds issued to provide for the supply of water, and any debt hereafter incurred by any portion or part of a city, if there shall be any such debt, shall be included in ascertaining the power of the city to become otherwise indebted; except that debts incurred by cities of the first class after the first day of January, one thousand nine hundred and four, and debts incurred by any city of the second class after the first day of January, one thousand nine hundred and eight, and debts incurred by any city of the third class after the first day of January, one thousand nine hundred and ten, to provide for the supply of water, shall not be so included; and except further that any debt hereafter incurred by the city of New York for a public improvement owned or to be owned by the city, which yields to the city current

net revenue, after making any necessary allowance for repairs and maintenance for which the city is liable, in excess of the interest on such debt and of the annual instalments necessary for its amortization may be excluded in ascertaining the power of such city to become otherwise indebted, provided that a sinking fund for its amortization shall have been established and maintained and that the indebtedness shall not be so excluded during any period of time when the revenue aforesaid shall not be sufficient to equal such interest and amortization instalments, and except further that any indebtedness heretofore incurred by the city of New York for any rapid transit or dock investment may be so excluded proportionately to the extent to which the current net revenue received by such city therefrom shall meet the interest and amortization instalments thereof, provided that any increase in the debt incurring power of the city of New York which shall result from the exclusion of debts heretofore incurred shall be available only for the acquisition or construction of properties to be used for rapid transit or dock purposes. The legislature shall prescribe the method by which and the terms and conditions under which the amount of any debt to be so excluded shall be determined, and no such debt shall be excluded except in accordance with the determination so prescribed. The legislature may in its discretion confer appropriate jurisdiction on the appellate division of the supreme court in the first judicial department for the purpose of determining the amount of any debt to be so excluded. No indebtedness of a city valid at the time of its inception shall thereafter become invalid by reason of the operation of any of the provisions of this section. Whenever the boundaries of any city are the same as those of a county, or when any city shall include within its boundaries more than one county, the power of any county wholly included within such city to become indebted shall cease, but the debt of the county, heretofore existing, shall not, for the purposes of this section, be reckoned as a part of the city debt. The amount hereafter to be raised by tax for county or city purposes, in any county containing a city of over one hundred thousand inhabitants, or any such city of this state, in addition to providing for the principal and interest of existing debt, shall not in the aggregate exceed in any one year two per centum of the assessed valuation of the real and personal estate of such county or city, to be ascertained as prescribed in this section in respect to county or city debt.

Section 12. The legislature shall provide for the method and limitations under which debts may be contracted by the cities, counties, towns, villages and other civil divisions of the state to the end that such debts shall be payable in annual instalments the last

of which shall fall due and be paid within fifty years after such debt shall have been contracted and that no such debt shall be contracted for a period longer than the probable life of the work or object for which the debt is to be contracted.

Section 13. The legislature shall provide for a state board of charities, which shall visit and inspect all institutions, whether state, county, municipal, incorporated or not incorporated, which are of a charitable, eleemosynary, correctional or reformatory character, excepting only such institutions as are hereby made subject to the visitation and inspection of either of the commissions, hereinafter mentioned, but including all reformatories except those in which adult males convicted of felony shall be confined; a state commission in lunacy in which shall remain the management and fiscal control of the state hospitals for the insane (not including institutions for criminals or convicts) except in so far as such management may now or hereafter be delegated by the legislature to local boards of managers, and which shall visit and inspect all institutions, either public or private, used for the care and treatment of the insane (not including institutions for epileptics or idiots); a state commission of prisons which shall visit and inspect all institutions used for the detention of sane adults charged with or convicted of crime, or detained as witnesses or debtors.

Section 14. The members of such board and of such commissions shall be appointed by the governor, by and with the advice and consent of the senate; and any member may be removed from office by the governor for cause, an opportunity having been given him to be heard in his defense.

Section 15. Existing laws relating to institutions referred to in the foregoing sections and to their supervision and inspection, in so far as such laws are not inconsistent with the provisions of this constitution, shall remain in force until amended or repealed by the legislature. The visitation and inspection herein provided for, shall not be exclusive of other visitation and inspection now authorized by law.

Section 16. Nothing in this constitution contained shall prevent the legislature from making such provision for the education and support of the blind, the deaf and dumb, and juvenile delinquents, as to it may seem proper; or prevent any county, city, town or village from providing for the care, support, maintenance and secular education, of inmates of orphan asylums, homes for dependent children or correctional institutions, whether under public or private control. Payments by counties, cities, towns and villages to charitable, eleemosynary, correctional and reformatory institutions, wholly or partly under private control, for care,

support and maintenance, may be authorized, but shall not be required by the legislature. No such payments shall be made for any inmate of such institutions who is not received and retained therein pursuant to rules established by the state board of charities. Such rules shall be subject to the control of the legislature by general laws.

Section 17. Commissioners of the state board of charities and commissioners of the state commission in lunacy, now holding office, shall be continued in office for the term for which they were appointed, respectively, unless the legislature shall otherwise provide. The legislature may confer upon the commissions and upon the board mentioned in the foregoing sections any additional powers that are not inconsistent with other provisions of this constitution.

ARTICLE XII.

Section 1. The legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated.

Section 2. The corporation created in the year one thousand seven hundred and eighty-four, under the name of The Regents of the University of the State of New York, is hereby continued under the name of The University of the State of New York. It shall be governed and its corporate powers, which may be increased, modified or diminished by the legislature, shall be exercised, by not less than nine regents.

Section 3. The capital of the common school fund, the capital of the literature fund, and the capital of the United States deposit fund, shall be respectively preserved inviolate. The revenue of such common school fund shall be applied to the support of common schools; the revenue of such literature fund shall be applied to the support of academies; and the sum of twenty-five thousand dollars of the revenues of the United States deposit fund shall each year be appropriated to and made part of the capital of such common school fund.

Section 4. Neither the state nor any subdivision thereof, shall use its property or credit or any public money, or authorize or permit either to be used, directly or indirectly, in aid or maintenance, other than for examination or inspection, of any school or institution of learning wholly or in part under the control or direction of any religious denomination, or in which any denominational tenet or doctrine is taught.

ARTICLE XIII.

Section 1. Sheriffs, clerks of counties, district attorneys, and registers in counties having registers, shall be chosen by the

electors of the respective counties, once in every three years and as often as vacancies shall happen, except in the counties of New York and Kings, and in counties whose boundaries are the same as those of a city, where such officers shall be chosen by the electors once in every two or four years as the legislature shall direct. Sheriffs shall hold no other office, and be ineligible for the next term after the termination of their offices. They may be required by law to renew their security, from time to time; and in default of giving such new security, their offices shall be deemed vacant. But the county shall never be made responsible for the acts of the sheriff. The governor may remove any officer, in this section mentioned, within the term for which he shall have been elected; giving to such officer a copy of the charges against him, and an opportunity of being heard in his defense.

Section 2. All county officers, whose election or appointment is not provided for by this constitution, shall be elected by the electors of the respective counties or appointed by the boards of supervisors, or other county authorities, as the legislature shall direct. All city, town and village officers whose election or appointment is not provided for by this constitution, shall be elected by the electors of such cities, towns and villages, or of some division thereof, or appointed by such authorities thereof, as shall be provided by law. All other officers, whose election or appointment is not provided for by this constitution, and all officers, whose offices may hereafter be created by law, shall be elected by the people, or appointed, as may be provided by law.

Section 3. When the duration of any office is not provided by this constitution, it may be declared by law, and if not so declared, such office shall be held during the pleasure of the authority making the appointment.

Section 4. The time of electing all officers named in this article shall be prescribed by law.

Section 5. The legislature shall provide for filling vacancies in office, and in case of elective officers, no person appointed to fill a vacancy shall hold his office by virtue of such appointment longer than the commencement of the political year next succeeding the first annual election after the happening of the vacancy.

Section 6. Provision shall be made by law for the removal for misconduct or malversation in office of all officers, except judicial, whose powers and duties are not local or legislative and who shall be elected at general elections, and also for filling vacancies created by such removal.

Section 7. The legislature may declare the cases in which any office shall be deemed vacant when no provision is made for that purpose in this constitution.

Section 8. No officer whose salary is fixed by this constitution shall receive any additional compensation. Each of the other state officers named in this constitution shall, during his continuance in office, receive a compensation, to be fixed by law, which shall not be increased or diminished during the term for which he shall have been elected or appointed; nor shall he receive to his use any fees or perquisites of office or other compensation.

Section 9. All offices for the weighing, gauging, measuring, culling or inspecting any merchandise, produce, manufacture or commodity whatever, are hereby abolished; and no such office shall hereafter be created by law: but nothing in this section contained shall abrogate any office created for the purpose of protecting the public health or the interests of the state in its property, revenue, tolls or purchases, or of supplying the people with correct standards of weights and measures, or shall prevent the creation of any office for such purposes hereafter.

Section 10. Appointments and promotions in the civil service of the state, and of all the civil divisions thereof, including cities and villages, shall be made according to merit and fitness to be ascertained, so far as practicable, by examinations, which, so far as practicable, shall be competitive: provided however, that honorably discharged soldiers and sailors from the army and navy of the United States in the late civil war, who are citizens and residents of this state, shall be entitled to preference in appointment and promotion, without regard to their standing on any list from which such appointment or promotion may be made. Laws shall be made to provide for the enforcement of this section.

ARTICLE XIV.

Section 1. All able-bodied male citizens between the ages of eighteen and forty-five years, who are residents of the state, shall constitute the militia, subject however to such exemptions as are now, or may be hereafter created by the laws of the United States, or by the legislature of this state.

Section 2. The legislature may provide for the enlistment into the active force of such other persons as may make application to be so enlisted.

Section 3. The militia shall be organized and divided into such land and naval, and active and reserve forces, as the legislature may deem proper, provided however that there shall be maintained at all times a force of not less than ten thousand enlisted men, fully uniformed, armed, equipped, disciplined and ready for active service. And it shall be the duty of the legislature at

each session to make sufficient appropriations for the maintenance thereof.

Section 4. The governor shall appoint his aides-de-camp and military secretary and the adjutant-general of the state, all of whom shall hold office during his pleasure, their commissions to expire with the term for which the governor shall have been elected; he shall also nominate, and with the consent of the senate appoint, all major generals. The legislature may prescribe the number and qualifications of major generals and aides-de-camp.

Section 5. All other commissioned and non-commissioned officers shall be chosen or appointed in such manner and shall have such qualifications as the legislature may deem most conducive to the improvement of the militia, provided, however, that no law shall be passed changing the existing mode of election and appointment unless two-thirds of the members present in each house shall concur therein.

Section 6. The commissioned officers shall be commissioned by the governor as commander-in-chief. No commissioned officer shall be removed from office during the term for which he shall have been appointed or elected, unless by the senate on the recommendation of the governor, stating the grounds on which such removal is recommended, or by the sentence of a court martial, or upon the findings of an examining board organized pursuant to law, or for absence without leave for a period of three months or more.

ARTICLE XV.

Section 1. It shall be the duty of the legislature by general laws to provide for the organization of new cities in such manner as shall secure to them the exercise of the powers granted to cities in this article. Except as to cities having more than one hundred thousand population, it shall be the duty of the legislature to restrict the powers of taxation and assessment so as to prevent abuses in taxation and assessments by any city or incorporated village.

Section 2. The legislature may regulate and fix the wages and, except as otherwise provided in this article, the salaries and may also regulate and fix the hours of work or labor, and make provision for the protection, welfare and safety of persons employed by the state or by any county, city, town, village or other civil division of the state, or by any contractor or subcontractor performing work, labor or services for the state, or for any county, city, town, village or other civil division thereof.

Section 3. Every city shall have exclusive power to manage, regulate and control its property, affairs and municipal government subject to the provisions of this constitution and subject

further to the provisions of the general laws of the state, of laws applying to all the cities of the state without classification or distinction, and of laws applying to a county not wholly included within a city establishing or affecting the relation between such a county and a city therein.

Such power shall be deemed to include among others:

(a) The power to organize and manage all departments, bureaus, or other divisions of its municipal government and to regulate the powers, duties, qualifications, mode of selection, number, terms of office, compensation and method of removal of all city officers and employees, including all police and health officers and employees paid by the city, and of all non-judicial officers and employees attached to courts not of record, and to regulate the compensation of all officers not chosen by the electors and of all employees of counties situated wholly within a city except assistants and employees of district attorneys and except officers and employees of courts of record.

(b) The power, as hereinafter provided, to revise or enact amendments to its charter in relation to its property, affairs or municipal government and to enact amendments to any local or special law in relation thereto. A city may adopt a revised chater or enact amendments to its charter or any existing special or local law in relation to any matter of state concern the management, regulation and control of which shall have been delegated to the city by law, until and unless the legislature, pursuant to the provisions of section four of this article shall enact a law inconsistent therewith. The term "charter" is declared for the purposes of this article to include any general city law enacted for the cities of one class in so far as it applies to such city.

The legislative body of the city may enact such amendments, subject to the approval of the mayor and of the board of estimate and apportionment of the city if any there be; provided, however, that in a city in which any of the members of the board of estimate and apportionment are not elected or in which no such body exists no such amendment shall be enacted without the assent of two-thirds of all members elected to such legislative body. Every such enactment shall embrace only one subject and shall expressly declare that it is such an amendment. Every amendment which changes the framework of the government of the city or modifies restrictions as to issuing bonds or contracting debts shall be submitted to the legislature in the year one thousand nine hundred and sixteen on or before the fifteenth day of March and in any year thereafter during the first week of its next regular session,

and shall take effect as law sixty days after such submission unless in the meantime the legislature shall disapprove the same by joint resolution. Every other such amendment shall take effect upon its enactment as above provided without such submission to the legislature.

The legislature by general law shall provide for a public notice and opportunity for a public hearing by the legislative body of the city concerning any such amendment before final action thereon by it.

At the general election in the year one thousand nine hundred and seventeen, and unless its charter after one revision thereof shall otherwise provide, in every eighth year thereafter either at the general or at a special election, every city shall submit to the electors thereof, the question "Shall there be a commission to revise the charter of the city" and may at the same time choose seven commissioners to revise the city charter in case the question be answered in the affirmative, provided, however, that in the city of New York the number of such commissioners shall be sixteen, nine of whom shall be chosen by the electors of the entire city, two by the electors of the borough of Manhattan, two by the electors of the borough of Brooklyn, and one each by the electors of the boroughs of The Bronx, Queens and Richmond respectively. Such revision when completed shall be filed in the office of the city clerk, and not less than six weeks after such filing shall be submitted to the electors of the city at the next ensuing general election or at a special election to be called for that purpose. If such revision be approved by the affirmative vote of the majority of the electors voting thereon such revision shall be submitted to the legislature during the first week of its session in January of the year following the approval thereof, and if not disapproved by the legislature by joint resolution prior to the first day of July thereafter shall thereupon take effect as law except as therein otherwise specified. The legislature shall by general law provide for carrying into effect the provisions of this paragraph.

Every charter revision and every amendment of any provision of law, enacted pursuant to this section, shall be deposited with the secretary of state and published as the legislature may direct.

Section 4. All cities are classified according to the latest federal or state census or enumeration, as from time to time made, as follows: The first class includes all cities having a population of one hundred and seventy-five thousand or more; the second class, all cities having a population of fifty thousand and less than one hundred and seventy-five thousand; the third class, all other cities.

The legislature may delegate to cities for exercise within their

respective local jurisdictions such of its powers of legislation as to matters of state concern as it may from time to time deem expedient.

The legislature shall pass no law relating to the property, affairs or municipal government of any city excepting such as is applicable to all the cities of the state without classification or distinction.

The provisions of this article shall not be deemed to restrict the powers of the legislature to pass laws regulating matters of state concern as distinguished from matters relating to the property, affairs or municipal government of cities.

Laws affecting cities in relation to boundaries, water supply, sewerage and public improvements, involving the use of territory outside the boundaries of cities, and in relation to the government of cities in matters of state concern and applying to less than all the cities of the state without classification or distinction are defined for the purposes of this article as special city laws. Special city laws shall not be passed except in conformity with the provisions of this section. After any bill for a special city law has been passed by both branches of the legislature, the house in which it originated shall immediately transmit a certified copy thereof to the mayor of each city to which it relates, and within fifteen days thereafter the mayor shall return such bill to the clerk of the house from which it was sent, who, if the session of the legislature at which such bill was passed has terminated, shall immediately transmit the same to the governor with the mayor's certificate thereon, stating whether the city has or has not accepted the same. In every city of the first class, the mayor, and in every other city, the mayor and the legislative body thereof concurrently, shall act for such city as to such bill; but the legislature may provide for the concurrence of the legislative body in cities of the first class. The legislature shall provide for a public notice and opportunity for a public hearing concerning any such bill in every city to which it relates, before action thereon. Such a bill, if it relates to more than one city, shall be transmitted to the mayor of each city to which it relates, and shall not be deemed accepted unless accepted as herein provided, by every such city. Whenever any such bill is accepted as herein provided, it shall be subject as are other bills, to the action of the governor. Whenever, during the session at which it was passed any such bill is returned without the acceptance of the city or cities to which it relates, or within such fifteen days is not returned, it may nevertheless again be passed by both branches of the legislature, and it shall then be subject as are other bills, to the action of the governor. In every special city law which has been accepted by the

city or cities to which it relates, the title shall be followed by the words "accepted by the city" or "cities" as the case may be; in every such law, which is passed without such acceptance, by the words "passed without the acceptance of the city" or "cities" as the case may be.

Section 5. All elections of city officers, including supervisors and judicial officers of inferior local courts, elected in any city or part of a city, and of county officers elected in the counties of New York, Kings, Queens, Richmond and Bronx, and in all counties whose boundaries are the same as those of a city, except to fill vacancies, shall be held on the Tuesday succeeding the first Monday in November in an odd-numbered year, and the term of every such officer shall expire at the end of an odd-numbered year. The terms of office of all such officers elected before the first day of January, one thousand nine hundred and seventeen, whose successors have not then been elected, which under existing laws would expire with an even-numbered year, or in an odd-numbered year and before the end thereof, are extended to and including the last day of December next following the time when such terms would otherwise expire; the terms of office of all such officers, which under existing laws would expire in an even-numbered year, and before the end thereof, are abridged so as to expire at the end of the preceding year. This section shall not apply to elections of any judicial officers, except judges and justices of inferior local courts.

ARTICLE XVI.

Section 1. Members of the legislature, and all officers, executive and judicial, except such inferior officers as shall be by law exempted shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the State of New York, and that I will faithfully discharge the duties of the office of ———, according to the best of my ability" and all such officers who shall have been chosen at any election shall, before they enter on the duties of their respective offices, take and subscribe the oath or affirmation above prescribed, together with the following addition thereto, as part thereof:

"And I do further solemnly swear (or affirm) that I have not directly or indirectly paid, offered or promised to pay, contributed, or offered or promised to contribue any money or other valuable thing as a consideration or reward for the giving or withholding a vote at the election at which I was elected to said office,

and have not made any promise to influence the giving or withholding any such vote" and no other oath, declaration or test shall be required as a qualification for any office or public trust.

Section 2. Any person holding office under the laws of this state, who, except in payment of his legal salary, fees or perquisites, shall receive or consent to receive, directly or indirectly, any thing of value or of personal advantage, or the promise thereof, for performing or omitting to perform any official act, or with the express or implied understanding that his official action or omission to act is to be in any degree influenced thereby, shall be deemed guilty of a felony. This section shall not affect the validity of any existing statute in relation to the offense of bribery.

Section 3. Any person who shall offer or promise a bribe to an officer, if it shall be received, shall be deemed guilty of a felony and liable to punishment, except as herein provided. No person offering a bribe shall, upon any prosecution of the officer for receiving such bribe, be privileged from testifying in relation thereto, and he shall not be liable to civil or criminal prosecution therefor, if he shall testify to the giving or offering of such bribe. Any person who shall offer or promise a bribe, if it be rejected by the officer to whom it was tendered, shall be guilty of an attempt to bribe, which is hereby declared to be a felony.

Section 4. Any person charged with receiving a bribe, or with offering or promising a bribe, shall be permitted to testify in his own behalf in any civil or criminal prosecution therefor.

Section 5. No public officer, or person elected or appointed to a public office, under the laws of this state, shall directly or indirectly ask, demand, accept, receive or consent to receive for his own use or benefit, or for the use or benefit of another, any free pass, free transportation, franking privilege or discrimination in passenger, telegraph or telephone rates, from any person or corporation, or make use of the same himself or in conjunction with another. A person who violates any provision of this section, shall be deemed guilty of a misdemeanor, and shall forfeit his office at the suit of the attorney-general. Any corporation, or officer or agent thereof, who shall offer or promise to a public officer, or person elected or appointed to a public office, any such free pass, free transportation, franking privilege or discrimination, shall also be deemed guilty of a misdemeanor and liable to punishment except as herein provided. No person, or officer or agent of a corporation giving any such free pass, free transportation, franking privilege or discrimination hereby prohibited, shall be privileged from testifying in relation thereto, and he shall not

be liable to civil or criminal prosecution therefor if he shall testify to the giving of the same.

Section 6. Any district attorney who shall fail faithfully to prosecute a person charged with the violation in his county of any provision of this article which may come to his knowledge, shall be removed from office by the governor, after due notice and an opportunity of being heard in his defense. The expenses which shall be incurred by any county, in investigating and prosecuting any charge of bribery or attempting to bribe any person holding office under the laws of this state, within such county, or of receiving bribes by any such person in said county, shall be a charge against the state, and their payment by the state shall be provided for by law.

ARTICLE XVII.

Section 1. Any amendment or amendments to this constitution may be proposed in the senate and assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, after consideration in joint session as hereinafter provided and after the same shall have been printed and upon the desks of the members in its final form for at least five calendar legislative days prior to agreement thereon, such proposed amendment or amendments shall be entered on their journals, and the yeas and nays taken thereon, and referred to the legislature to be chosen at the next general election of senators, and shall be published for three months previous to the time of making such choice. On the first Tuesday following the adoption of either house of the legislature of any proposed amendment to this constitution, the two houses shall convene in joint session for the consideration thereof and thereafter the proposal shall be considered and acted upon by the Houses separately. If in the legislature so next chosen, as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, and all the requirements for the original passage thereof shall be observed, then it shall be the duty of the legislature to submit such proposed amendment or amendments to the people for approval at the general election in such manner as the legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the electors voting thereon, such amendment or amendments shall become a part of this constitution from and after the first day of January next after such approval.

Section 2. The question "Shall there be a convention to revise and amend the constitution?" shall be submitted to the electors

of the state at each general election next ensuing the lapse of twenty successive years since the last previous submission thereof, and shall be submitted at such other general elections as the legislature may by law provide. In case a majority of the electors voting thereon shall decide in favor of a convention for such purpose, the electors of every senate district of the state, as then organized, shall elect three delegates at the next ensuing general election at which members of the assembly shall be chosen, and the electors of the state voting at the same election shall elect fifteen delegates-at-large. The delegates so elected shall convene at the capitol on the first Tuesday following the completion of the canvass of the votes cast for delegates-at-large at such election and shall continue their session until the business of such convention shall have been completed. Every delegate shall receive for his services the same compensation and the same reimbursement for railroad fare as shall then be annually payable to the members of the assembly. A majority of the convention shall constitute a quorum for the transaction of business, and no amendment to this convention shall be submitted for approval to the electors as hereinafter provided, unless by the assent of a majority of all the delegates elected to the convention, the yeas and nays being entered on the journal to be kept. The convention shall have the power to appoint such officers, employees and assistants as it may deem necessary, and fix their compensation and to provide for the printing of its documents, journal and proceedings. The convention shall determine the rules of its own proceedings, choose its own officers, and be the judge of the election, returns and qualification of its members. In case of a vacancy, by death, resignation or other cause, of any district delegate elected to the convention, such vacancy shall be filled by a vote of the remaining delegates representing the district in which such vacancy occurs. If such vacancy occurs in the office of a delegate-at-large, such vacancy shall be filled by a vote of the remaining delegates-at-large. Any proposed constitution or constitutional amendment which shall have been adopted by such convention, shall be submitted to a vote of the electors of the state in the manner provided by such convention, at a general election which shall be held not less than ninety days after the adjournment of such convention. Upon the approval of such constitution or constitutional amendments, in the manner provided in the last preceding section, such constitution or constitutional amendments, shall go into effect on the first day of January next after such approval.

Section 3. The validity of an election upon any amendment or proposed constitution or the question "Shall there be a convention to revise and amend the constitution?" or upon any other

question submitted to the electors of the state under this constitution, and the determination whether the proposed amendment, constitution or question has received the number of votes requisite for the adoption of such amendment or constitution or the decision of such question, may be contested in the supreme court by any elector in an action in equity brought within three months after such election against the secretary of state, and the judgment rendered shall be reviewable by the court of appeals.

Section 4. Any amendment proposed by a constitutional convention relating to the same subject as an amendment proposed by the legislature, coincidently submitted to the people for approval, shall, if approved, be deemed to supersede the amendment so proposed by the legislature; provided, however, that, if at the general election held in the year one thousand nine hundred and fifteen, a majority of the electors voting thereon shall have approved and ratified the amendment to section one of article two of the constitution then in force, heretofore proposed by the legislature, section one of article two of this constitution shall be deemed thereby amended so as to embody therein the new matter contained in such proposed amendments so approved. If, at such general election, a majority of the electors voting thereon shall have approved and ratified chapter five hundred and seventy of the laws of one thousand nine hundred and fifteen heretofore submitted to the people pursuant to section four of article seven of the constitution then in force, the same shall take effect notwithstanding any amendment of such constitution, except that, irrespective of the terms of such chapter, the debt so authorized shall be paid in equal annual instalments in conformity with section four of article nine of this constitution.

ARTICLE XVIII.

Section 1. This constitution shall be in force from and including the first day of January, one thousand nine hundred and sixteen, except as herein otherwise provided.

Done in Convention at the Capitol in the city of Albany, the day of September, in the year one thousand nine hundred and fifteen, and of the Independence of the United States of America the one hundred and fortieth.

In witness whereof, we have hereunto subscribed our names.

.....
President and Delegates at Large.

.....
Secretary.

The President — The delegates will be good enough to take their seats. The question before the Convention now is upon the adoption of the Constitution which has just been read, as a whole. The Secretary will call the roll. The delegates in favor of the adoption thereof will answer Aye; the delegates opposed will answer No, as their names are called. The Secretary will call the roll.

Mr. Wagner — I should like to ask the Chair if it would not be proper, in view of the controversy which arose on the reapportionment article, which those of us coming from New York city think is so unjust to that city, whether or no that could be separated from the rest of the Constitution and we vote first on the Constitution excepting the apportionment provision, and then upon the rest of the Constitution; so that those of us who consider that that is an injustice which overcomes whatever good may be done in the Constitution may have an opportunity to state that they favor many of the reforms which they themselves have contributed to bring about; so that they would have an opportunity to voice their sentiments in favor of those reforms and then declare emphatically that we have since the beginning of the Convention been opposed to this unjust discrimination against the citizens of the city of New York.

The President — The Chair is obliged to rule that the vote shall be taken upon the Constitution as a whole. The question of the submission of the Constitution, whether as a whole or in separate sections, or partly as a whole except as to separate sections, will remain to be determined after the Convention has passed upon the adoption of the Constitution. The Secretary will call the roll.

Those who voted in the affirmative were: Adams, Aiken, Allen, F. C., Angell, Austin, Bannister, Barnes, Barrett, Bayes, Beach, Bell, Bernstein, Berri, Betts, Blauvelt, Brenner, Buxbaum, Byrne, Clearwater, Clinton, Cobb, Coles, Cullinan, Curran, Dennis, Deyo, Dick, Doughty, Dunlap, Dunmore, Dykman, Fancher, Fobes, Foley, Ford, Franchot, Gladding, Green, Greff, Haffen, Hale, Heaton, Hinman, Johnson, Jones, Kirby, Landreth, Latson, Law, Leggett, Lennox, Lincoln, Linde, Lindsay, Low, McKean, McKinney, McLean, Manderville, Martin, L. M., Marshall, Mathewson, Mealy, Meigs, Newburger, Nicoll, D., Nixon, Nye, O'Brian, J. L., O'Brien, M. J., Olcott, Owen, Parker, Parsons, Pelletreau, Phillips, S. K., Quigg, Reeves, Rhees, Richards, Rodenbeck, Rosch, Ryan, Ryder, Sanders, Sargent, Saxe, M., Schoonhut, Schurman, Sears, Sharpe, Shipman, Slevin, Smith, E. N., Standart, Steinbrink, Stimson, Stowell,

Tierney, Tuck, Vanderlyn, Van Ness, Wadsworth, Waterman, Webber, C. A., Weber, R. E., Weed, Westwood, Whipple, White, C. J., Wickersham, Wiggins, Williams, Winslow, Wood, Young, C. H., Young, F. L., President.

Those who voted in the negative were:

Ahearn, Baldwin, Bockes, Bunce, Burkan, Dahm, Daly, Donnelly, Donovan, Dooling, Drummond, Eisner, Endres, Eppig, Fogarty, Frank, Griffin, Harawitz, Heyman, Kirk, Leary, Martin, F., Mereness, O'Connor, Ostrander, Saxe, J. G., Sheehan, Smith, A. E., Smith, R. B., Smith, T. F., Unger, Wagner, Ward.

When Mr. Ahearn's name was called he said: Mr. President, I wish to be excused from voting and will briefly state my reasons. Mr. President, in the few minutes which I shall occupy in stating my vote and the reasons therefor it shall be more for the sake of the record of the proceedings of the Convention than in the expectation of changing anyone from his to my views. When I came here it was with the strong hope, if not faith, that we would approach the consideration of a Constitution in as nearly an unpartisan and nonpartisan attitude as was possible for ordinary men. I have found, however, as the discussion proceeded and the votes have been recorded, that many to whom I had looked as leaders in the patriotic and unselfish work, had themselves come with definite and well prepared plans for partisan advantage and party profit. I had hoped that New York city would receive justice in this Convention — its financial contributions to the State treasury if not its population entitled it to this — else so far as the metropolis is concerned, why the expense of a Convention if the only result was to be a repetition of the unfairness and injustice in the present Constitution? To deny New York city its rights as you have done in this Convention is to damn its work. To prevent New York city of its full voice in the making of the laws is to destroy whatever of other usefulness may have been accomplished here. I had thought that, in the twenty years that have passed, our friends of the rest of the State would have been led to see the injustice under which we labored and suffered, and would have become brave enough and patriotic enough to yield something of narrow partisanship, that five millions of the people might, during the coming generation, be adequately and fairly represented in the making of the laws for their government. And I have observed with not a little wonder at the stupidity of those, particularly those whose activities in public and political life have included the past twenty years, what the effect on the State will be if what has been called the short ballot shall prevail — in the hands of a strong Governor — strong and masterful, a machine can be erected and continued, compared with which the existing political machines are but as a simple child — As one who believes in genuine Democratic-Republicanism I am

strongly in favor of the most direct responsibility of the office holder to the source of all power — the People — and, instead of a limitation on the electorate in the matter of choosing their officials and representatives, I favor the widest possible use of popular elections in the filling of all offices — both great and small — and the largest increase of power and responsibility to all such elected officials.

For these and many other reasons which at this time I shall not take up your time to enumerate, I believe the result of our labors here to have been not fruitful of good results, and I beg therefore to be recorded as voting in the negative.

When Mr. Austin's name was called he said: Very briefly I wish to explain my vote. Not without difficulty have I made up my mind as to whether or no I ought to vote for this Constitution as a whole, for to many of the new proposals adopted by this Convention I am unalterably opposed, as has been shown by my vote. But the proposed new Constitution contains much that is good, and is certain, if adopted, to result in a more rational, efficient and economical State government. Possibly I have not yet reassumed the normal perspective and a true sense of proportion, and in the calm light of reflection it may appear that the good overbalances the bad, and that the latter is not as poor as it now seems. I sincerely hope this will appear to be true. To my mind a vote in the affirmative at this time does not necessarily imply approval of the whole instrument, nor is it an unqualified promise to support it, although this I hope to be able to do. It is simply a vote to submit the new Constitution to a vote of the people, and I am led to vote as I shall largely by asking myself whether, if it depended upon my vote alone, I should be justified in voting to nullify the labors of this Convention by submitting nothing whatever to the people as a result thereof. I feel that I would not be justified in taking such a responsibility and for that reason I vote Aye.

When Mr. Barnes's name was called he said: Mr. President, for the reason set forth by Mr. Austin, if I agree with him, I would vote Aye upon this proposal; but the question before the House, as put by the President, was, Shall this Convention be approved by this body? I cannot by my vote do anything to aid the cause of State socialism. I believe that two of the proposals adopted by this Convention direct the mind of the voter toward that end, against which I believe we should devote our entire attention. That is the issue before the people of the State. I therefore ask to withdraw my excuse and vote No.

When Mr. Bernstein's name was called he said: Viewing the work of the Convention in the critical light of a Democrat who gave cordial support to much that has been adopted, I can say in

good conscience that the mistakes that have been made here are mistakes of omission rather than mistakes of commission. I cannot feel as some do that the work done has not been constructive, and I cannot believe that the electorate will reject the revision made by its chosen representatives. Much of the revised Constitution must commend itself to the people. The changes in the financial system of our State and cities, the rearrangement of administrative departments, the centralization of responsibility in government, the plan to equalize and make uniform our system of taxation and assessments, the effort to preserve and conserve more securely the natural resources of our State, the simplification of our judiciary system — all represent an intelligent effort to improve existing conditions, and make for a happy result. I glory in the knowledge that the Democratic minority contributed in so large a measure to that result. It was Mr. Smith's determined efforts that made the financial article a splendid product of statesmanship. It was Mr. Stanchfield's logic that made the responsibility sought to be placed on the Governor a real undivided responsibility. It was Governor Sheehan's efforts that abolished a useless and expensive State census. It was Senator Wagner's persistency that preserved to the people the right to an elective judiciary. It was the patriotic position of men like Mr. Nicoll and Judge O'Brien and Senator Foley and Mr. Baldwin that saved us from the substitution of a false principle of equality for the policy of humanitarianism and social welfare to which we are committed. It was the spirited criticism of all of the men around me that gave life and sustenance to the proposals adopted; and their support of these proposals on final passage speaks more for the solidarity of our citizenship, the patriotism of our people, and the future of our State than anything that has ever been written or spoken. Many of the reforms adopted represent compromise and adjustment. But what great reforms do not? They follow the line of least resistance. But why not? In a community where the views are as varying as the people, it is necessary to compromise in order to produce popular approval, and obtain results. In much, however, you have failed. Your contribution to the home rule of cities is doubtful and delusive. Your failure to adopt reforms in the legislative branch of government will come back to plague you. And your refusal to recognize the great principle of equality in representation is petty and partisan. It represents a spirit of narrow-mindedness that contrasts strongly with the spirit of unselfishness and patriotism displayed by the Democrats that stood for your reforms. It is the one black cloud on a bright horizon, a cloud that may burst in a shower of indignation on your unsheltered heads. Considering everything, however, the finished

product represents to my mind an improvement of our fundamental law. It will clear the way to further improvement and make for progress and prosperity. And for that very weighty and substantial reason, I have decided to vote and do vote aye.

Mr. Sheehan — Mr. President, I rise to make an inquiry as to legislative procedure.

The President — The gentleman will please state his inquiry.

Mr. Sheehan — The inquiry is as to whether or not on the last day of the session of the Legislature the rules are not relaxed with reference to the extension of time, the limitation of time in debate? That has been the custom and procedure in both branches of the Legislature.

The President — There is no such change in the rules in this Convention. The limit of three minutes in which time a member may explain his vote applies.

When Mr. Bockes' name was called he said: Mr. President, I wish to explain my vote. If the proposal, the two proposals from the Committee on Industrial Relations would be submitted separately, and if the proposal from the Committee on County Government which seeks the giving to people in towns an opportunity to dodge the responsibility of self-government could be submitted separately, and if the short ballot proposal could be submitted separately, I should feel almost entirely satisfied with the work of this Convention. But the short ballot proposal, which by some is feared to be autocratic, backed up by the proposal of this Industrial Relations Committee, which would seem to supply the corn to the people as the autocracy of Caesar did, and the other Caesars who spell their names Czars and Kaisers, who have scattered their corn by this system of law — I feel that there is danger if this Constitution should be enacted as it reads here now that this State of ours might not be still a land of opportunity, as it has been heretofore, wherein the sons of the poor could rise to places of distinction and power. I, therefore, with great reluctance vote no.

When Mr. Brackett's name was called he said: I ask to be excused from voting. I came here, Mr. President and members of the Convention, hoping and feeling with as great a sense of responsibility as any member who sits here. I came here prepared to surrender any views that I had that were not basic, that did not form a substantial part of what I believe to be the essence of free government. This Convention has put together a body here and submits it to the members of this Convention as a whole that it dares not submit to the people of the State as a whole. What logic there is making us here vote upon the instrument as a whole and then not submitting it to and requesting the people to vote on it as a whole, I do not know and I cannot see. I notice that the

darling of the short ballot, that that is to be submitted covered up in the belly of the main instrument, if the present program is carried out, with the hope that the good things in the main instrument will carry that iniquity through. If there is anything that ought to be submitted separately, it ought to be that and I am perfectly willing to take the verdict of the people on that proposition. It is manifest that the sponsors of the proposition are afraid to do so and purpose to hitch that up with the other things which, as I say, it is hoped will carry it through. I ask to be excused from voting. Mr. President, am I excused from voting?

The President — That question cannot be put until the conclusion of the roll call.

Mr. Brackett — I rise to a point of order, that the question as to whether a member shall be excused from voting is always submittable and should be submitted at once. That is one of the exceptions to the rule that nothing can be done during the call of the roll. That is a part of the calling of the roll.

The President — The Chair is obliged to overrule the point of order.

Mr. Brackett — The Chair is mistaken, with great respect.

The President — The request for excuse will be presented immediately upon conclusion of the call. The Secretary will proceed with the call.

When Mr. Bunce's name was called he said: There are very many of the proposed amendments that I heartily approve, but there are many others that I oppose so intensely and so frankly that I must vote against it here and hereafter. Therefore, I vote no.

When Mr. Burkan's name was called he said: I ask to be excused from voting and will briefly state my reasons. I feel constrained to disapprove of the proposed Constitution, and I do so with much regret, because the labors of the Convention were in many respects very meritorious. The principal reason which impels me to take this course is the persistent discrimination against the city of New York. The great body of taxpayers of the great city, with a population of more than half of the entire State, groaning under the heavy burden of taxation, looked forward to this Convention to adopt such reforms as would prevent mandatory legislation affecting the city of New York, and the counties embraced therein, and give absolute autonomy to the city of New York in relation to its purely local affairs. With a view to this result the greatest reform needed was to abolish the existing limitation upon the representation of the city of New York in the State Legislature, which limitation deprives the people of the city of New York of an equality of representation. In consequence of

this limitation the average New York city Senator represents twice as many people as the average constituency of the rural district, while the New York city Assembly districts have an average constituency that is three times as large as that of the average rural Assembly district. The limitation in the present Constitution was prompted by a spirit of partisanship to give the control of the Legislature to the Republican party, and this limitation is perpetuated in the proposed Constitution in the same spirit and with the same object. This partisanship was exemplified by the extraordinary provision inserted in the proposed Constitution on motion of a Republican delegate from Kings county, providing that the apportionment of Assembly districts shall be made not by the entire Board of Aldermen representing the entire city of New York, but that the apportionment for each county shall be made by the members of the Board of Aldermen coming from that particular county. The scheme of the local government of the city of New York as established by its charter and as contemplated by the home rule article, is that the Board of Aldermen in its entirety shall pass upon and determine all matters within its jurisdiction and that the members of the Board representing particular boroughs or counties shall not sit separate and apart from the remainder of the Board even though the functions to be exercised may relate specifically and be limited and restricted to the matters concerning one particular borough or county. The effect of the provision to which I refer is to enable a gerrymander in Kings county with a view to making the Assembly representation from the county of Kings solidly Republican. The perpetuation of this existing limitation will continue the control and dominance of the Legislature in respect to the local affairs of the city of New York. The provision of the home rule article permitting the Legislature by joint resolution to nullify any charter or important amendment thereto adopted by the city, still subjects the city of New York to the embarrassments of interference by the State Legislature —

The President — The gentleman's time has expired.

Mr. Burkan — For these reasons I vote No.

When Mr. Byrne's name was called he said: I desire to explain my vote. I have no doubt, regardless of what the people may do with this proposed Constitution, that the sun will continue to rise and set just the same. The city of New York will continue to pay about 73 per cent. of the State taxes and continue to be under-represented, that is, regardless of what the people may do. Were I to cast my vote for this Constitution, or about to cast it, as it now stands I would vote No, because I will vote for no Constitution which contains a provision which will put the city of New York in such an unfair position. However, I

consider this a step in the right direction, that it is progress, some progress, and, as a Democrat I desire to advocate any proposition which makes for progress. I therefore vote Aye.

When Mr. Cullinan's name was called he said: I desire to explain my vote. Gentlemen of the Convention, this proposed Constitution strikes me as reflecting more of the federalism of Alexander Hamilton than the genuine Republicanism in a representative form of government advocated by Jefferson and Adams. I regret that this Convention thought it wise to allow the Secretary of State to canvass and count the votes of the Governor who may appoint him. I regret that the interests of agriculture have not been duly considered in this Convention by allowing those great interests to have something to say in the selection of a Commissioner of Agriculture. I am opposed to the Socialist features adopted by this Convention, referred to by Mr. Barnes. But I believe that there are many excellent features in this Constitution which warrant me in supporting it. I believe the classification of departments and the financial system to be submitted to the people constitute a step forward in better government for this State. I vote Aye for the Constitution.

When Mr. Dahm's name was called he said: I desire to explain my vote. For the reasons previously stated to the members of this Convention, I cannot now vote for this Constitution as a whole, and therefore vote No.

When Mr. Dooling's name was called he said: I ask to be excused from voting and will state my reason. The people of this State expected much from this Convention; they have received little, and I fear its work will not receive their approval. What is branded and described as home rule for cities is not the genuine article; it is a name without substance. The short ballot deprives the people of power now possessed and long exercised by them. The history of this State and the record of the illustrious men who have occupied the offices heretofore filled by election but hereafter to be appointed by the Governor demonstrates that such power of selection was wisely exercised by them. Under the new scheme no offices are abolished, no economies effected, but such little power as the elector had is curtailed and the Executive entrusted with additional power, to an extent dangerous to our institutions. His unlimited, unrestricted power of appointment and removal give him absolute control of our election machinery and make him a master instead of one of the servants of the people. The three branches of our government no longer will maintain an even balance. Able, intelligent and useful members of the Legislature will be tempted to accept offices from the Executive at times and under conditions heretofore prohibited, and

the power of the Executive, within the Legislature, by his freedom of appointment of its members will make those bodies annexes of the Executive Chamber, eager to do the bidding of its incumbent, and rob both branches of the Legislature of their freedom and independence. The city of New York is not given fair representation in the Legislature. For these and other reasons which time alone prevents me from expressing I am obliged to and do vote No.

When Mr. Doughty's name was called he said: I have been opposed to some of the proposals for amending the Constitution, but I now believe that I have had my day in court and should accept the judgment of the majority. I therefore vote Aye.

When Mr. Drummond's name was called he said: I ask to be excused from voting long enough to explain. I regret very much that I cannot vote for this Constitution as a whole. I have devoted most of my life to private charities and served the city of New York for four years as commissioner of public charities. I cannot conscientiously support the provision which creates a secretary of charities and corrections. I do not believe there is any necessity for it. I believe it will work for strife and discord. Therefore, I vote No.

When Mr. Dunmore's name was called he said: I desire to explain my vote. It is unnecessary for me to say at this time that I do not approve of all of the provisions of this revised Constitution. My previous action demonstrates that. I assume, however, that some of these objectionable provisions will be submitted separately to the people, thus giving those opposed an opportunity to vote against those provisions. While voting for the other provisions of this Constitution, I now vote to submit the entire revised Constitution to a vote of the people, that our entire labors may not come to naught. I reserve, however, the right as an elector to vote against such provisions as do not meet my approval. I therefore vote Aye.

When Mr. Dykman's name was called he said: Although the question is, whether the Constitution should be approved, the real question is, whether the Constitution shall be submitted to the people. The great bulk of the work we have done has my hearty commendation and support. Some articles I disapprove of just as heartily. I reserve to myself the right, and I expect to have the opportunity, to oppose in particular, the one article to which I chiefly object. I vote Aye.

When Mr. Eisner's name was called he said: I believe that I owe it as a duty to myself and to my constituency to explain at this time my action here and my action hereafter. I do not see, Mr. President, how I could vote for this Constitution as it now reads with the reapportionment article in it as it now stands.

Gladly would I have voted in favor of this Constitution to-day if it were submitted to us here in the same manner that it is going to be submitted to the electorate of the State, just as Senator Brackett has stated. It has been represented to me that, because the crime of 1894, as it has been denounced by one of the members here, has not been increased but has been allowed to remain, therefore the support of the members from the city of New York is owing to this Constitution. I cannot look upon it that way, Mr. President. In my opinion, it was the duty of this Constitutional Convention to approach the Constitution containing the crime of 1894 and to administer the principle of representative government equally throughout the State. The Convention has failed to do that, and now asks me to voice my approval of a Constitution which contains that inequality. If that provision is voted upon separately, I shall vote No upon that, but upon the rest of the Constitution, at the polls, even though a great many of the provisions are unsatisfactory, I shall vote Aye. The short ballot reform is a step in the right direction, although the entire program reminds me of an impressionist picture. It looks very good from far away, but the closer you get to it the worse it looks. The Public Service Commissions have been constitutionalized in the interest of the public service corporations. Trafficking in the temple has been practiced here in order to obtain the support of the delegates from Brooklyn. But I pass over all that, Mr. President. I simply want to state now, although I vote No upon the Constitution here, if the reapportionment article is submitted separately I shall vote for the balance of the Constitution at the polls. I vote No.

When Mr. Eppig's name was called he said: I wish to explain my vote. I am in favor of many of the proposed amendments which have been adopted by this Convention. I am heartily in favor of the tax article. I also believe that the serial bond matter is a very good one. I believe in home rule. I am also in favor of the judiciary article. However, I am opposed to the short ballot. I believe in having more elective officers. I believe in the election of the public service commissioners and also of the superintendent of public works. If many of these propositions were submitted separately I would vote for them in the affirmative. However, as they are submitted to us as a whole, I am compelled to vote No.

When Mr. Foley's name was called he said: I ask to be excused from voting. My sentiment has been to approve many of the articles contained in this Constitution. I have been recorded in the affirmative as to the short ballot, the State budget, the judiciary and other articles. But, because of the inclusion of

the unfair legislative apportionment with regard to New York city and because, further, of the denial of an adequate measure of home rule for New York city, assuming, as it does, a lack of competency in our citizens to control their own affairs, without the necessity for a veto provision by means of legislative nullification, I am compelled to vote in the negative.

When Mr. Griffin's name was called he said: I beg to be excused from voting long enough to express my reasons. There are many features of this proposed Constitution which may be practically considered as improvements. As to those I have already expressed my attitude as they were respectively submitted and passed upon. The question is now, can I conscientiously approve of the instrument as a whole? This I cannot do for the reason, first, that it perpetuates an incongruous and inequitable system of legislative representation; second, it embodies a reactionary system of political philosophy which is utterly opposed to the trend of democratic government. It is a step backward. It drapes in mourning the milestones on the path of human liberty. I vote No.

When Mr. Haffen's name was called he said: Although I am opposed to several articles in this proposed Constitution, still, taking it as a whole, I am in favor of it. I vote Aye.

When Mr. Harawitz's name was called he said: I desire to explain my vote. I find myself in the same position as a majority of my Democratic brethren. I feel that this delegation in most of its efforts has worked honestly, zealously and conscientiously. I believe that in its constructive work this convention has done a great deal of good, but, as we are asked at this time to vote for the entire Constitution, I cannot give my assent to it as a whole. There are two or three provisions in it which I feel are to the detriment of the people of the State, especially the people of the city of New York. I am strongly opposed, as I have shown by my vote, to the short ballot as centralizing power in one man. I am strongly opposed to the provision which robs the city of New York of its just representation in the Legislature. I am heartily in favor of the great work done by the Judiciary Committee and great work by the Committee on State Finances and the great work done by the Committee on Bill of Rights and, therefore, if the Constitution was submitted at this time and we were asked to vote separately on some of these amendments, I would gladly vote Aye on most of them, but, being that we are asked to vote on it as a whole, Mr. President, I must vote No.

When Mr. Hinman's name was called he said: I have been disappointed at the action of this Convention in one or two instances, but I find myself in hearty accord with the substantial

work of this Convention. I shall vote Aye for the entire Constitution for two reasons: First, because I find we have made such substantial progress in the reorganization of the State government in the proposal that is to be made to the people; and, second, because, while there are some objectionable features in this Constitution, so far as my own personal judgment is concerned, I am in hopes that those matters may be submitted separately. And, finally, I shall vote Aye for the reason that, if this Constitution as proposed is not approved, we will continue under the present Constitution, which I find equally objectionable in more than one instance. I shall vote Aye.

When Mr. Kirby's name was called he said: Mr. President, I wish to be excused from voting and will briefly state my reasons. In every assemblage of men who gather for the purpose of discussion of the whole scheme of government, extravagance of statement and baneful prophecies are indulged in; but I do not know of a single vote of mine that I would recall upon any proposition that was before this body, and I am very frank to say that one proposition alone justifies its submission to the people, and that is the magnificent work in the creation of a scheme for what is termed the budget. I am frank to say that as far as the short ballot is concerned, while I was unalterably opposed to it, I have not the slightest fear of the mailed hand of antagonistic, autocratic power, because if there should be abuse by the Executive or by any members of the departments the people would rise in their wrath and demand their rights. I believe, Mr. President, that great work has been accomplished under your wise leadership, and while there are some propositions with which I cannot agree, particularly the propositions indicated by Mr. Barnes in his statement, nevertheless, as I believe in the supreme right of the people to determine these questions, I deem it an honor, sir, to be recorded in the affirmative.

When Mr. Leary's name was called he said: Mr. President, I sincerely regret that this Convention did not see the error of its way and grant genuine home rule to the people of New York. In addition to that it has failed to strike out that pernicious clause in the old Constitution which denied the city of New York equal representation. While there are a great many things in this document that are an improvement over the present Constitution. I feel that the loss in the present document far outweighs the benefit. As long as the section of the State which I represent is unjustly dealt with, I feel that I must enter my protest and vote No.

When Mr. Leggett's name was called he said: Mr. President, I wish to briefly explain my vote.

If the question addressed to me on the roll call were in my opinion whether I could approve of each separate measure that has been incorporated in this proposed Constitution, I certainly would have to vote No, because I retract no part of the opposition which I have manifested to various separate propositions that have now been incorporated in this measure. But I regard the question addressed to me and to the rest of the Convention as being whether, on the whole, the proposed Constitution is a better Constitution than the old one and in that respect I have no hesitancy in pronouncing my judgment. I believe that the business of the State will be conducted under the proposed Constitution in so much more effective a manner than under the old, that I am glad to vote Aye.

When Mr. McLean's name was called he said: Mr. President, I will briefly explain my vote. There are in these proposed amendments several propositions of government which in my judgment are not quite sound. I sympathize very heartily with many of my associates in their objections to certain parts of this instrument, which they have specified. I am, however, controlled in my consideration by this reflection: That in coming to a Convention of this kind I am one out of a very considerable number; that no Constitution can conceivably be framed to which there will not be some good ground for objection on the part of the minority. The human mind involves that diversity of view, that difference in the mode of treating certain problems. I, therefore, have no desire to reflect upon any of my associates who differ with me in regard to the main conclusions. For myself, looking at the matter impartially with nothing in my mind but what I believe should be the controlling consideration, the welfare and good administration of the State, I shall vote in favor of this Constitution. I may say, Mr. President, all I desire to say in regard to particularizing matters here, of loss, I am controlled by a confidence in what has been done for the cause of home rule. Instead of that constituting anything of a reason for not supporting the Constitution, I regard it as an advance under every consideration that can be adduced to the contrary. I am persuaded, sir, as a student of municipal government, a study to which I have given my life, that in the history of the whole legislation on this problem in America, no such improvement for the cause of home rule properly and fairly related to the sovereignty of the State has ever been made as you have contributed by the adoption and preparation of this particular article for home rule. For all these reasons I shall support this Constitution without reluctance, despite what opposition I may have for other features of it. I desire to be recorded in the affirmative.

When Mr. Mereness' name was called he said: Mr. President, I am sure I fully appreciate the honor accorded me of membership in two Conventions to revise the Constitution of this State. I voted for the present Constitution in the Convention and at the polls. It is much more agreeable to be with the majority than the minority in a body of this kind, and I sincerely regret that I cannot vote for the Constitution about to be submitted, as a whole. Neither can I see the philosophy of selecting out some portions which the Committee seems to think are weaker than the rest of the Constitution. It seems to me the effect of that will be to throw discredit upon the whole work of the Convention and I am reminded to some extent of the couplet,

> "He either dreads his fate too much,
> Or his deserts are small,
> Who fears to put it to the touch,
> And win or lose it all."

I rest my negative vote on the provision authorizing the Legislature to restrict and regulate manufactures in tenement-houses. I regard that provision as socialistic and as authorizing class legislation. I am opposed to the short ballot or to any shortening of the ballot. The article on taxation is obviously the product of one or more minds obsessed with an idea. Last but not least, I am opposed to any increase in official salaries. Less than four years ago over four hundred thousand voters in the State of New York voted against increasing legislative salaries, and upon the question of increasing the salary of the chief executive of the State over three hundred and seventy-six thousand voted against that proposition and I am sure that in the light of subsequent events there has been no diminution in sentiment along those lines. When it comes to a question of the county which I have the honor to represent, the vote on the question of increasing legislative salaries was 823 for and 3,369 against; and on the question of increasing the Governor's salary the vote was, 741 for and 3,202 against, and in the Thirty-second Senate District the vote was 3,697 for and 9,694 against; and on the gubernatorial salary, 2,836 for the increase and 9,293 against. I am in entire sympathy with these negative votes, and I cannot stand here and vote against that sentiment. I vote No.

When Mr. Delancey Nicoll's name was called he said: Mr. President, as one of the minority of this Convention, I find little difficulty in giving my vote in favor of the Constitution as read, although I naturally regret that I differ with the majority of the body with whom I am connected in this Convention. I give my vote, Mr. President, because I believe that the Constitution as

now proposed contains a large number of substantial reforms which must operate to the establishment of the simpler, better and more economical government of the State. I refer to the article relating to the short ballot; to the article relating to the budget, and to the article relating to the reform of the judiciary, particularly the judiciary. Such a reorganization of the courts is likely to do away with the law's delay. In addition to those great measures, we have other propositions addressed to the remedying of acknowledged evils, and still others designed to meet the just demands of those classes whose protection and betterment always has been and always will be a matter of deep concern to the State. These are great measures, gentlemen, for which I have worked and voted already in this Constitution; voted and worked in common with the majority of members of the party, the minority party, to which I am attached, for an examination of the votes upon all of these great propositions will show you that a majority of the minority voted for all of them. I say they are great measures and I sincerely trust that they will become a part of the organic law of the State. But it is said by some of my associates, you should not cast your vote for them, because, forsooth, the Constitution contains a provision with respect to home rule which does not satisfy the just expectations of the people of the city of New York. Well, now, gentlemen, when you come to discuss the question of home rule, I think I have a right to say, considering my long identification with the matter, that I know home rule when I see it. I was fighting the battle of home rule and in the ring when many of the men who are now crying loudest for it were in the cradle crying for the bottle. In the Convention of 1894 the records show the minority sought to obtain for the city of New York an adequate measure of home rule, which is substantially such a measure as is now covered by this Constitution. But the majority were against it, and they gave it only the meagre amount of home rule which is contained in the present Constitution. That seemed to us entirely inadequate, and from that time on those who believe in the cause of local self-government for cities have been fighting on, endeavoring to get a larger and ampler grant of home rule for the cities of the State. Now, I want to testify in this presence as one who has been engaged in this business for 20 years that I never expected to see the day when the city of New York would be granted the amount of home rule which has been granted by the provisions of this amendment. I expected to go down to my grave without seeing it, so strong were the prejudices engendered by the Convention of 1894 in its refusal to grant what seemed to us to be our just demands. I say I never expected to see the day when the majority party of this

State would restore to the city of New York the right to meet in Convention and make its own charter and thereafter to amend its own charter. And I find little difficulty, either, with the nullification provision, because I believe, taught by the lessons of experience, that unless the Convention of the city of New York assembled for the purpose of making its charter makes a charter which violates every principle of decent government and every doctrine of sound public policy, that any Legislature will ever dare to nullify the charter. Now, with respect to the question of apportionment: That was, of course, the subject which divided us in the Convention of '94 into two parties. The Friday of the day of that Convention was a far different day from this Friday. Then we were all at swords' points, with knives in our hands; at each other's throats; then the Democratice party refused to participate practically in the further proceedings of the Convention or to listen to the address, and we went off and prepared by ourselves an address to the electors of the State, and what did we principally complain of? We complained against the provision in the present Constitution which says that no two counties or the territory thereof as now organized which are adjoining counties which are separated only by public waters shall have more than one-half of all of the Senators. We pointed out them, as we have pointed out even to this Convention, that this was an unjust discrimination against the city of New York, and that whatever may have been the population of New York, with regard to apportionment, no such invidious distinction should be incorporated in the organic law. It carried, and we went to the people with our address, and on the stump, and to our astonishment the people of the city of New York, voted for it; not the people of the State, but the people of the city by a majority vote. In other words, all the well-intentioned efforts of the delegates to that Convention, and all their fiery oratory was ignored when the people came to the polls, on that morning in November, and they actually adopted this provision. Now, notwithstanding that fact, gentlemen, notwithstanding the adoption by the people of that time, I still say it is an unjust and an unwise and an unfair provision in this Constitution, particularly now, because since 1894 the relation, the ratio of the population of the city of New York, to the rest of the State has greatly changed and the burdens of taxation are differently distributed. At that time, New York had only 60 per cent. of the population and now it has over 70. So the situation is different. Yet this Convention chose to leave the Constitution as it had been adopted by the people in 1894. Now, what was that provision directed against? At that time there was contemplated a formation of a greater city. Kings and New York were going

to join together to make Greater New York, and the gentlemen from the country thought they saw that that territory, composed of Kings and New York, would soon have sufficient majority to control the Senate. Therefore, this was included. But, what is the situation now? And what does this Constitution say as to the present situation? The Constitution does not say the city of New York shall never have more than half the Senators. There is no such provision in the Constitution. All the Constitution says is, "and no two counties"— practically meaning Kings and New York — "or the territory thereof as now organized which are adjoining counties, or which are separated only by public waters shall have more than one-half of the senators". What has happened since then? New York is not now composed of the two counties of Kings, and New York and the old Bronx. It is composed of Kings and New York, the Bronx and Queens and Richmond. So that if Queens and Richmond and the Bronx and Kings and New York can now have half the Senate, they are entitled to it under the provisions of this Constitution, and if we shall add on, as I believe we shall very soon do, the great and flourishing city of Yonkers, we shall undoubtedly have more than half of the representation in the Senate.

The President — The gentleman's time has expired.

Mr. D. Nicoll — May I state one word more?

The President — Unanimous consent is asked for by Mr. Nicoll that he be permitted to continue.

Mr. D. Nicoll — I just want to say one more word.

The President — Is there any objection? The Chair hears none.

Mr. D. Nicoll — Now, that is the situation, and now my views with regard to this apportionment question are greatly modified by what has been done by this Convention for home rule, and the other provisions adopted upon the suggestion of Mr. Stimson with regard to laws passed for expenditures for local, purely local purposes, within the State, outside of New York, concerning which it is complained that New York has to bear some seventy per cent of the taxation. Now, both of these things are important. Now, the natural grievance of New York city has been the grievance of all dwellers in cities, that is, we don't want to be governed by people at some distance — a principle which is embodied as part of the inheritance of the Anglo-Saxon race. That is all our grievance is; we want to govern ourselves as to our local affairs; and we want to have something permanent and stable and definite in our government for which we can fight, so we can bring about a better government by ourselves and through ourselves. Now, that has been given us and because we pay the greater share of

taxation, we want to have some protection against the paying out of public money for improvements in which we have no concern. Now, all these things, all these things, I believe, Mr. President, have been substantially met by the provisions of this Constitution relating to home rule, and the various provisions relating to the expenditures of public money, and, therefore, I have no difficulty and consider myself greatly honored in having the opportunity to vote Aye in favor of the Constitution.

When Mr. M. J. O'Brien's name was called he said: In explaining my vote I just want to say a word. I cannot but feel now that the work of this Convention is coming to a close, that the result has been most satisfactory. I have in mind the condition of New York State three or four years ago when the radical sentiment was so prevalent, when the subjects of recall and referendum were under discussion and were being agitated, and under those circumstances, if a Convention had met in this Assembly Chamber we could picture to ourselves the character of Constitution which would have been framed and presented to the people; and I have in my mind, looking to the future, the possibility of a return to those days and that time when under excitement and under the impulse given by false doctrines and false teachers our people again may be led out of the beaten paths. We were brought together under circumstances of grave and most favorable conditions; when, although there was war throughout the world, we were here at peace and undisturbed by the great cataclysm that occurred on the other side. We were here enabled to take up these great fundamental questions which mean so much to the welfare and prosperity of our commonwealth. And, of course, no human effort is ever perfect. There are provisions in this Constitution to which I have endeavored throughout the deliberations to express my opposition. I have not been found always in agreement even with my Democratic friends, at least not with the majority in this Convention, but I was here to express in my own person and with the limited influence I possessed the best thought I had for the advancement of the people through their fundamental law, and I believe we have got it in this Constitution. It is a far step in advance in the way of what was needed under the conditions that we are now living. It is a Constitution which will be approved by the people, because it has within it the promise of reforms safe and sane in character, and it has been placed on the soundest basis. The questions of home rule and apportionment I shall not dwell on. I take the same view of it as expressed by Mr. Nicoll, and for myself reserve, as Mr. Dykeman did, regarding some particular matter that may come up, the right to express myself as I see fit, but taking it as a whole I have no hesitation,

and it is a great honor and privilege to be able to record my vote in the affirmative.

When Mr. O'Connor's name was called he said: Mr. President, there are a great many provisions in the Constitution which meet with my hearty approval, but I cannot support a Constitution that leaves a wide field in the great State of New York for a repetition of the Colorado situation at Ludlow, and the situation in West Virginia. You men here must realize that in the State of Colorado, at Ludlow, there were thirteen innocent women and children shot down by the militia of that State, with no chance of going to court; no chance for a hearing of any kind. You are trying now to put the same Constitution and the same conditions into effect in this State, so that the same state of affairs can be brought about and put in force in this great State. I know some of you will say that such a thing cannot happen in the glorious Empire State, but there is not a man in the Convention who cannot say, or who can contradict the fact, that the action which brought about the murder of these 13 women and children was directed from Broadway in the great city of New York. If they were capable of directing an action that would permit that condition to prevail in Colorado they would not hesitate to direct the same action in this State under this Constitution Labor asks, labor demands that they be given a hearing in court before judges when the courts are in session. Under this provision, under this Constitution, I cannot see where labor gets a square deal. I must vote No.

When Mr. Ostrander's name was called he said: I cannot permit myself to be one of those who damn this instrument by faint praise. Our labors here may be a step forward, as has been said, but it is such a little one that we have to stop and hesitate as to whether it is marking time or stepping forward. It is something like the poor old tramp who was so thin he could not tell whether he had a stomachache or a pain in his back. Take the matter of the responsibility which we have seen fit to put upon the Governor, this woeful little mouse. We have shouldered him with the immense responsibility in caring for the duties of the Secretary of State and standing behind the State Treasurer, two officers of the State who have never sinned yet. We have created a department of public works, which is to take care of the engineering of the State. We fail to provide that at the head of it there must be an engineer. We have shifted 168 different positions here. Some of them we have strengthened with the constitutional powers and larger salaries. We have not taken a job away from any man. We have added a few. We have been increasing all the salaries for the work and we have not increased results to accrue to the State. We have compelled all the lawyers to learn their profession over again and to be admitted to practice under a new code

of procedure. I hope it may turn out well, but the clients will find that it is an expensive job teaching their counsel. I have learned some lessons here. I had supposed when I came here that the Constitution was for the purpose of setting forth in a clear, broad manner the principles upon which all persons and bodies charged with the affairs of government acted. I find that we have spent a great deal of time legislating upon matters which would be very proper for town meetings and village boards of trustees. There are many things in this Constitution of which I heartily approve, and there are many others of which I just as heartily disapprove. That seems to be the state of mind of most of my associates here. Some have seen their way to vote Aye on it, because of some particular provision, but, on the whole, I must vote No.

When Mr. Quigg's name was called he said: Not knowing what the question before the Convention is, I do not see how I can cast my vote. The President, as I understood him, said, first, that the question was upon the approval of the Constitution as adopted, and then, as he put the vote, I think he said that the question was on the adoption of the Constitution as a whole. On these questions I should give a different vote. If the question is on the approval of the Constitution, I propose to take the same time that every voter in the State has to think the matter over, and I will cast my vote on the approval of the Constitution when the time comes. If I am asked here to vote whether or not this is the Constitution we have adopted, and on its submission I am ready to vote Aye. But not knowing what the question is, and not having been permitted by the Chair to make the parliamentary inquiry, so that I could vote, I shall have to decline to vote. I don't know how.

When Mr. M. Saxe's name was called he said: I desire to explain my vote, mainly for the purpose of answering two gentlemen who have preceded me. Mr. Byrne of Brooklyn called attention to the fact that New York was paying 73 per cent. of the State's taxes. I would like to say for his information and for that of the other gentlemen of the Convention, particularly the delegates from the city of New York, that the State Board of Equalization, which met this morning and which has just adopted the State equalization table, prepared by the State Tax Commission, makes New York pay sixty-eight and one-tenth per cent. of the direct tax to be levied by the Legislature — for which the Legislature of 1915 provided, which is five per cent under Mr. Byrne's estimate. I desire to say, further, Mr. President, in answer to the gentleman who referred to the article on taxation, as having been the product of a man obsessed with the idea, that it was the

product of many minds, particularly after very careful consideration of 16 intelligent minds, that were obsessed with but this one idea, that is, practical justice and equity in taxation. Now, you have built up here an improved administrative system, an improved financial system, and an improved judicial system for the State of New York, grand and excellent work, without a doubt, but what would all that amount to without a fair and just system of taxation which is impossible under the present Constitution and which the proposed article provides? I vote Aye.

When Mr. Schurman's name was called he said: I desire to explain my vote. Like other members of the Convention, I am not satisfied with all the amendments that have been inserted in the Constitution, nor am I satisfied with all that has been omitted from the Constitution. I think it may prove a mistake to have increased, and increased so largely, salaries of the members of the Legislature. But I do not intend to specify or to express at so late a date what I might have preferred otherwise, only to say that I think this Convention in a non-partisan spirit has carefully considered important measures for the improvement of the Constitution of the State, and that the result of their labors do constitute and will constitute a notable improvement of the Constitution. As time goes by, I believe one may venture to predict that the feature above all others which will stand out is our reorganization of the Executive and administrative branches of government, with the consequent increase of the powers of the Governor, which we made to establish open, visible, honest, efficient and responsible government. In my judgment we should not have got responsible government if we provided for a Governor with all these large powers to hold office for four years, but leaving the term as it is, we provide for an executive who shall be called, every two years to an account by the people as to the manner in which he has performed these large duties, which this Convention proposes to impose upon him. Taking everything into account, Mr. President, I have no doubt and no hesitation in expressing my conviction, while retaining the existing framework of the Constitution, this Convention, correcting the deficiencies which time has developed has made notable contribution to its improvement, and so I, therefore, with the greatest satisfaction and pleasure, vote Aye.

When Mr. Sheehan's name was called he said: Mr. President, studied effort has been made to make the people believe that the apportionment article of this Constitution is an improvement upon the present article of the Constitution, and that the new plan materially lessens the outrage committed upon the people of the

city of New York in 1894. Let it be thoroughly understood that the Constitution of 1894 and the proposed one now before us declare that Senate and Assembly apportionment shall be based upon population, excluding aliens, and yet in a spirit of indifference to this mandate, it has been the prevailing opinion thus far that the apportionment of Senate and Assembly districts shall be based, not upon population, but upon territory. When this question was first presented in this Convention, almost to a man the minority tried to adopt a system of apportionment based upon population. Time will not permit a restatement of the objections then made. In that argument we recognized as worthy of consideration the proposition that there should be some limitation placed upon the legislative power of the city of New York. I did not contend, nor do I now contend, that the Senate and Assembly should both be apportioned on the sole basis of population, for it is my opinion that the rural sections of this State should have a veto power over the possible tyrannical or extravagant act of a Legislature, controlled by a majority of the people of a single city. I do not contend that the representatives of that portion of the State lying outside of the limits of the greater city should be subject to legislative control or domination in both branches of the Legislature by representatives of the greater city. The rural sections of this State may well be entitled to protection against the agressions of the majority, and I would be the last man to turn the control of the legislative affairs of this State over to a Senate and Assembly composed of a majority of men from the Greater City of New York, but that is not the proposition before us. If that were the question, there would be no serious dispute among us, in all probability. What the majority want and what they insist on, is that the minority of the people of this State, living outside of the Greater City of New York, shall be permitted to have a majority, not of one branch of the Legislature, but of both branches. There is not a man on the floor of this Convention who will for a moment assert in private that this is right in principle. There is not a fair-minded man here who does not know that that is a perversion of popular government and it is the rankest kind of injustice and inequality to say that the minority shall control the majority in both branches of the legislature. The representatives of the city of New York would probably be content with a proposition that would give to that locality representation either in the Senate or Assembly based upon majority rule. But, Mr. President, the people of that city will not calmly submit to an outrage which permits a minority of the people to control both branches of the Legislature. A majority of the people will never knowingly surrender to the

minority the uncontrolled power of taxation. If it is desirable to protect the minority against the extravagance and tyranny of a majority, it is equally necessary that the majority should be permitted to elect at least one branch of the Legislature, for only by the exercise of this veto power can the minority be prevented from imposing unjust and extortionate taxation upon the majority. This fundamental right you violate as effectively under this proposition as was done 1894. Mr. President, I desire to read two sentences from the document issued by the fifty-eight Democratic delegates to the Constitutional Convention in 1894. "We believe that the organic law of the state should be written in lines of exact and equal justice to every man, with favor to none, with protection to all and without distinction between persons, political parties, creeds, classes or divisions of the commonwealth. The Convention was for the people who do not consider that party questions have a place in the organic law of the State, and it now remains for the people to condemn at the polls the attempt of the Republican majority to use the Constitutional Convention for partisan ends."

I am reminded by that sentence of my friend, Brother Nicoll, when he attempted to justify the apportionment of 1894, by saying that we went to the people on the question and the people adopted it. That is true, but I call to his attention the fact that while the Republican candidate for Governor that year received a majority of 185,000, this particular feature of the Constitution received but 50,000 majority. I call to his attention, and to the attention of my Democratic associates upon this floor, that consistently and inconsistently from 1894 to the present, every Democratic State Convention in this State has held up for excoriation the outrage of 1894. I vote No.

When Mr. Shipman's name was called he said: This proposed new Constitution contains many excellent features, but it also contains some which are unfair if not actually reactionary. The articles upon the State Government and its division into fewer boards and departments, the introduction of a budget, the judiciary article, and the courts, as well as the extension of the jurisdiction of the City Court of the City of New York, the reform of the civil procedure in the courts, the provision for the benefit of wage earners and in regulation of tenement-house manufacturing and State control of taxation of personal property, a measure of home rule for cities, represent some real progress; but the articles which practically forbid manhood representation throughout the State, by making one kind of apportionment for the city of New York and another kind for the rest of the State and which concentrate and centralize all powers in the hands of

the Governor constitute serious blemishes upon the instrument and may be fatal in the coming election. Assuming, however, that the question is the approval of the Constitution for its submission to the people, I am however willing that the people may have the opportunity of obtaining any good that may be found in the instrument, notwithstanding its defects, and for that reason and that reason only, I vote Aye.

When Mr. Slevin's name was called he said: I wish to explain my vote. I regret exceedingly that the whole proposed Constitution is presented to us at this time for our approval or disapproval. The excellent work by many of the Committees should be endorsed. With two exceptions I am in favor of the proposed Constitution. I refer to two exceptions, they are the "Home Rule for Cities" and the "Reapportionment" articles. I trust, sir, that the provisions relating to New York city's self-government shall be separately submitted to the people. When I think, sir, of the conscientious work of the Committee on State Finance, of which I had the honor to be a member, and the able and sincere work of the other Committees, I am compelled to approve of the work of this body as a whole and am therefore compelled to vote Aye.

When Mr. A. E. Smith's name was called he said: I ask to be excused from voting and I will very briefly explain my reasons. Understanding the question to be the final passage of the Constitution, which is to be submitted, it is rather difficult for a man from New York to be able to support it. I believe that the reports of the Committees, particularly the Committee on Manner and Form of Submission, should have been adopted and dealt with before this Constitution was ready. Much that there is in it I am in very hearty accord with. I believe we have made some substantial progress in the budget article. I have no particular fault to find with regard to the State officers article. I believe it is as near the Democratic declaration of faith as we can expect to have it, coming from the opposite side. One thing about it, above all others, that gives me pleasure is the great delight that my dear old friend Mr. Nicoll takes out of it. He feels so satisfied that it is no worse than what was done to us twenty years ago. Now, irrespective of the fact that the people of the city of New York twenty years ago adopted the limitation, the Senate limitation, it must be admitted by every man around this circle who has made any study of, or devoted any attention at all to the political developments of the last five or six years that no such approval can reasonably be expected from the people of New York to-day. There are in the State of New York men who still believe that it is probably right that there be some limitation put

upon the upper House, but some men have learned by experience that the Assembly apportionment provision operates in the same direction, although it is not written into the Constitution in so many words. Now, the very report which is about to come from the Secretary of State, after taking the census, clearly shows that if you are to continue the rule set down for the apportionment of Assemblymen to different counties, New York city, as now constituted, can never receive her share, her proper share, of the representatives in the Assembly. During the original discussion on apportionment the Senator from Saratoga made some remark that led people to believe that it was possible, if we accepted a restricted Senate, that we might get a popular Assembly. My friend, Mr. Nicoll, should have been present at the meeting of the Committee when that was discussed. Would any county give up its Assemblyman? Why, you would have about as much chance as carrying this Capitol down to the foot of State street.

We have a right, after twenty years, to expect something better. We have grown in size and in influence. That we have been discriminated against by the up-State there can be no question. Twenty years ago New York was not paying taxes to the Adirondack counties for their wild forest land. Twenty years ago we were not contributing fifty per cent. toward the upkeep of the dirt roads in the towns of the State. Twenty years ago the people of New York were not carrying upon their shoulders the great burden of indirect tax. It was very interesting to have the Chairman of the Taxation Committee say we are only paying 68 per cent. That encourages me in the belief that if we only pay 68 per cent. of the direct tax we must be paying about 90 per cent. of the indirect tax. Mr. Nicoll said that, substantially, the home rule amendment that was adopted here was presented twenty years ago. That is news to me. I did not think that our home rule proposition was that old. I thought it was something drawn to meet the spirit of the times. You know we didn't have the Philippines twenty years ago. How could it be fashioned after the principle in the Philippines, as was stated by Dr. Schurman? Now, I want to say a few words to everybody around this place. I may be a little bit cold-blooded in my way of looking at things, but I cannot help that. That comes to me from practical experience. While you leave the power up here the bargaining remains, and that is where New York city always has and always will get the worst of it, and any charter commission elected under the provisions of the home rule bill will not act under this bill until they have found out what the wishes of the majority are, no matter what that majority is, or what its political faith may be. The whole history of ten years back in

trying to secure a new charter in the city of New York shows nothing but dickering and compromise with the majority party in the Legislature, and you have left the door open for that, the greatest of all abuses. It could easily be cured. It could easily be said that when a large majority of the people have decided upon their form of charter, they should be permitted to live under it, whether good, bad or indifferent. It is their own and they have the power to change it any time, but when you say that the men from all over the State have the last say as to what New York city is to have, as a charter, well, you come down and try to explain that that is home rule. I see, Mr. President, that you are about ready to call me down, so I will withdraw my excuse and vote No.

When Mr. R. B. Smith's name was called he said: I desire to explain my vote. Mr. President, with the bulk of the work which has been done by this Convention and with the great majority of the articles which will be submitted to the people I am in hearty accord. Mr. President, there have been some things left out of the proposed Constitution which, in my judgment, should have been put in, and I am amused at the attitude taken by the minority over the senatorial restriction, which was put into the Constitution before consolidation, and which will never have the slightest application to the city of New York during the lifetime of a man who sits in this Convention. Mr. President, the up-State is responsible for the presence here of a majority, and, in fairness to them, they were entitled to have incorporated into the Constitution a senatorial restriction against the city of New York which means something. Mr. President, there have been some provisions incorporated with which I have been unable to agree. Fundamentally, I am opposed to them. If I understand aright the parliamentary situation which now confronts us, I am unable to see how an affirmative vote on my part will not necessarily imply the record of a reversal of my settled convictions which I have previously expressed by negative vote. Therefore, Mr. President, as much as I regret to seem to be out of accord with the majority of my associates, I see no alternative except to vote in the negative.

When Mr. Steinbrink's name was called he said: To my mind this instrument marks a great step forward in government. In some details there necessarily was compromise. The status of our charities, corrections and hospitals has been preserved. Wholesome changes have been made in the judiciary article, and sound reasoning prompted the financial program, the reapportionment article, and the grouping of the State departments. The electors of this State have now the opportunity of approving or

disapproving the best that the composite judgment of delegates from both great parties sent here from all sections of the State could give them. If it be said that we have made some mistakes, the answer is, that a man who never makes a mistake never makes anything. Even though there be details which displease some, it is in its entirety excellent, and I vote Aye.

When Mr. Unger's name was called he said: I listened very reverently, in fact, almost with awe, to my facile colleague from the 14th senatorial district, as he spoke for half an hour and three minutes. I could not help but think that his argument condoning the apportionment discrimination was really as illusory as his miracle in chronometry.

Mr. President, in my judgment there are one or two admirable reforms inaugurated by this Constitution. Notably, they are the budget plan and the taxation article. If they were separately submitted my voice and my vote would be for them. But, there are other phases of the proposed Constitution which are indefensible. Thus, the judiciary article, with the exception of the enlargement of the city court's jurisdiction, is inexcusable, and, without any recompense therefor adds to the already extraordinary burden that the taxpayers must stand. It injects politics into the judiciary. I am in favor of standing by the Democratic platform so far as the short ballot is concerned, but this much abused and compromise short ballot plan is a purely political device and merits condemnation because principle has been sacrificed to expediency. The so-called home rule provision is misleading and a misnomer and it does not accomplish what New York is demanding. We have been given a stone when we asked for a loaf. The apportionment proposal is an affront to New York city. For these reasons, Mr. President, and for others (among which are the scant consideration given to the demands of labor; to the proposals of the Bill of Rights Committee; and to the requests from the Spanish-American War Veterans, rightly or wrongly, that they should be given the same standing as Civil War veterans), I am regretfully compelled and constrained to vote No.

When Mr. Vanderlyn's name was called he said: I ask to be excused from voting and briefly state my reasons. If this vote on the part of any delegate means an absolute approval of everything that is contained in these proposed amendments, then I think there are a great number of delegates here who would be compelled to vote no. I am decidedly opposed to the amendment introduced by the Committee on Taxation. I believe it is a pernicious, unfair and unjust proposition. I believe that the voters from the rural sections of this State will repudiate it. I do not believe that they will approve of it. As for myself I disapprove

of it and if the proposition put to us is, "Do you approve of the amendments?" I shall be compelled to say that "I do not" and vote in the negative. There is another phase of the proposition which has been referred to. As Mr. Quigg in his explanation says I do not intend to be bound here by my vote in case after having examined these amendments in the future I shall decide differently. In case after having studied them carefully and after reading the public press I arrive at the conclusion that some of them are wrong and that they ought not to be approved I do not wish by my vote here in favor of the amendments proposed by this convention to be bound in my future action. However, as I believe there are many good things in these proposed amendments, and as I believe the general trend of the amendments submitted to this Convention are proper and good and should be approved by the people of this State, and if I can consistently vote Aye and reserve to myself the right to vote against, and advise my constituents to vote against, this pernicious taxation proposition, and if I can advise them to vote against any proposition that in the future, after consideration I am convinced is unjust, then, as I believe that on the whole the amendments are good, I should vote Aye. However, if by voting Aye, I must approve of every proposition here submitted and every amendment, then I shall vote No.

I ask to be excused, Mr. President.

The President — The Chair did not understand Mr. Quigg to make a parliamentary inquiry. He did not suppose he was doing so. The same question which Mr. Quigg has stated has, in fact, been repeated, and the Chair will state his answer to the question by reference to the rule of the Convention. Rule 67, adopted by this Convention at the outset, and coming down from former Constitutional Conventions, provides that after the Committee on Revision and Engrossment has reported back the revised Constitution, the same shall be reported by said Committee to the Convention, read through therein, and submitted to a final vote, prior to its final adjournment. To determine exactly what that final vote is, reference must be had to the provisions of the present Constitution under which we are acting, and there we find this provision: "Any proposed constitution or constitutional amendment which shall have been adopted by such convention shall be submitted to a vote of the electors", etc. The vote, therefore, under Rule 67, which is described as a final vote, is a vote not upon approval, but, in the words of the Constitution, upon the adoption of the revised Constitution. It was the Chair's intention so to state the question and the Chair thinks it was so stated. That is the question.

Mr. Quigg — Mr. President, I ask to be recorded in the affirmative.

Mr. Vanderlyn — As it means that we approve of the submission, I vote Aye.

When Mr. Wagner's name was called he said: Mr. President, I ask to be excused from voting and will briefly state my reasons. Even as the rules provide, and as the present Constitution provides, it is my judgment that a final vote as to what amendments may be submitted to the people could have been divided so that those of us who favor the major part of this Constitution would have an opportunity to express our disapproval of the reapportionment provision and some of us even of the home rule provision. I am not in accord with the sentiments expressed by my good friends, Mr. Nicoll and Judge O'Brien, when they say that, as the Constitution is now presented to us, they deem it an honor to vote for it. With great reluctance, I will vote for the provision giving limited home rule to New York city, but I shall to the bitter end oppose, and, of course, vote against, the apportionment provision. Those of us who are now voting in favor of the proposal as it is before us, will be understood by the people of New York as not relaxing in our protests against the discrimination under which we are suffering. The citizens of New York are disappointed at the action of this Convention and while, in the State at large, many of the remedies sought have been approved of, in the city of New York the two main things which were sought in this Convention have absolutely been denied. One is absolute home rule. Speaker Smith, speaking a moment ago, showed you how, actuated merely by partisanship — I do not hesitate to say it — you in the upper section of the State still propose to hold on to the charter of the city of New York because no charter can be enacted except you from Erie or Onondaga or Oswego or other counties of the State approve our request before we can have it. And, secondly, you so limit representation in the State Legislature, that in the city of New York, irrespective of our population, we can never have control in either branch of the Legislature. So that I say New York city will be disappointed in not having received the remedies which it has sought, and which it expected at the hands of this Convention. The ruling class as referred to by Mr. Nicoll no doubt comes from the city — the ruling class in this Convention. Mr. Saxe, who spoke a moment ago, thought that we from New York would find consolation in a declaration that we only paid sixty-eight per cent. of the direct tax. If you will go over the appropriation for which we are to raise this direct tax, you will find that New York City is practically excluded from any benefits which that direct tax was appropriated for. He also

failed to tell you that we are paying eighty per cent. of the indirect taxes out of which the major part of the expenses of our government is now being paid, so that while we are paying on an average of seventy-three or seventy-four per cent. of the taxes of the State, while we have a population of over sixty per cent., you still continue to limit us to less than fifty per cent. of the representation in the Legislature. I had hoped that I should, with some other members of the minority, have an opportunity to express approval of many of the reforms which we supported, and which we helped to some extent to form and to bring about, and at the same time be given an opportunity to express again our disapproval of the continuation of the crime of ninety-four. I withdraw my request to be excused and ask to be recorded in the negative.

When Mr. C. A. Webber's name was called he said: I desire to explain my vote. We are offering to the people by this Constitution an opportunity for real change and beneficial reform. The question of apportionment, as far as equal representation is concerned, is not presented for a solution now. I believe the situation as to this fortunately will correct itself without any actual discrimination against New York city, notwithstanding the provisions intended to effect such discrimination. The question seems about to become academic. Even if this be not true, the adoption or rejection of this Constitution is not going to correct the injustice of 1894. As it is not a live correctible issue now, I cannot allow it to influence my vote. As a whole, I shall heartily commend this Constitution. I vote Aye.

When Mr. Wiggins name was called he said — I ask to be excused from voting, and will briefly state my reasons. It would be wholly unnecessary for me at this time to explain my vote were it not for the fact that it might be construed as a reversal of my vote on several amendments as they have been presented from time to time. I do not mean to reverse myself on any of those votes. I voted in this Convention as a matter of principle, not as a matter of dickering or log-rolling or expediency; I do not change my views on these matters over night because I happened to go home and rest peacefully for three or four days. I have endeavored to vote here and discharge the duty of citizenship as I saw it. I think, however, that this Constitution ought to be submitted to the people. They have been the makers of the basic law and always will be, and I think that we would wholly fail in the trust which they have reposed in us if we should vote to decline to permit them to pass upon our work. I view my vote in the affirmative as being a vote for the purpose of permitting the people to pass upon the work of this Convention, and with that in

view and without changing my vote on any of these proposed matters which I have opposed, I withdraw my request and vote in the affirmative.

When Mr. Blauvelt's name was called he said: Mr. President, I ask to be excused from voting and will briefly state my reasons. I favor the submission of the proposed Constitution to the consideration of the electorate of the State. We delegates were commissioned by that electorate, to determine what, if any, changes should be made in our fundamental law, and to submit to them the result of our deliberations. The proposed instrument simply embodies the result of our labors in that direction, and I believe that it should be submitted to the people for their approval or disapproval, for in the final analysis, the people adopt the Constitution, not the delegates. I too regret that the document contains many provisions to which I, as a private citizen, cannot and will not subscribe. I reserve the right, as have other delegates, to vote against it and to oppose its ratification in whole or in part in November next. For the sole reason, therefore, that I would not attempt at this time to suppress the result of our labors here during the past four or five months, I withdraw my request to be excused from voting, and vote in the affirmative.

When Mr. Curran's name was called he said: I desire to be excused from voting and will briefly state my reasons why. After listening to a number of the excuses I have come to the realization that, while labor has presented many Proposed Amendments to the Constitution, very few were given any consideration, but, on the whole, I find that in the Committee on Bill of Rights the amendment which was reported has been defeated, one of the amendments that would be detrimental to the interests of the workers of the State if it was adopted has been killed. The tenement house proposition that has been reported was acted upon favorably. That is another proposition in which the working people of this State are very deeply interested. The occupational disease provision was reported and adopted by the Convention, which is another very important matter. While, in my opinion, labor should not expect all that it requested, it seems to me at least it got its fair share. It was opposed to the short ballot proposition. Whether we have now what should be called the short ballot or the long ballot, I am unable to say. The so-called short ballot is not the real short ballot because it contains only the Governor and the Lieutenant-Governor. During the last few weeks I have had considerable talk and considerable thought as to what my attitude would be. Let me say while I have spent all my life among the workers and have been a member of a trade organization for 30 years and prominent in almost all its councils,

I believe I should at least use a little judgment of my own. If I believed that this Convention did not give some recognition to the people who were unable to speak for themselves, through their representatives, I might take an opposite view from some of my friends. I believe if this proposed Constitution should be defeated at the polls, it will be many a year before the working people will get the relief they can now, if these amendments are adopted. I, therefore, Mr. President, withdraw my request and vote in the affirmative.

When Mr. Green's name was called he said: Mr. President, I desire to explain my vote. First, may I apologize for being late in attending the session to-day? The arrival of a near relative who was very ill absorbed all of my attention until the time I came in here late during the voting. I am sorry I could not have participated in the early morning session. I cannot approve of all the Proposed Amendments which have received the majority vote of this Convention, and I feel confident that the country people, if given the chance, will not approve the same, especially a proposition to take away their right of franchise by limiting their right to vote for certain State Officers, and thereby, in my opinion, making it more easy for pernicious control by invisible government in behalf of corporate interests, big business and scheming politicians. I would not change, if I could, a single vote registered by me in Committee or in this Convention. I shall assert my right to discuss and vote on the Proposed Amendments as I believe right. It seems to me, however, that the question properly before this Convention is, shall the Proposed Amendments which have received the majority of votes cast by delegates to this Convention be submitted to a vote by the electors of the State? Upon this construction of the question, I am pleased to vote Aye.

Mr. Barnes — I desire to change my vote from the negative to the affirmative, on the explanation made by the Chair as to the significance of this vote. I understood from the way the Chair put the question that it carried with it the individual approval of each person who voted Aye. With the explanation that that is not so, I have no reason for voting in the negative.

Mr. Foley — I did not understand the Chair to state the question as involving only submission to the voters of the people of the State and I have given two reasons why I would oppose the adoption of the Constitution, but those reasons and the exercise of action upon those reasons may well be postponed until the actual vote on election day. I therefore request that the reasons given by me stand upon the record but that my actual vote be changed from the negative to the affirmative.

The President — The Chair does not wish Mr. Foley to misunderstand. The Chair has stated the question in the words of the Constitution. The question is upon the adoption of the revised Constitution, so the gentleman must vote upon that according to his own understanding. Mr. Foley's vote will be changed from the negative to the affirmative.

The President — Before the announcement of the result, the question is upon excusing Mr. Brackett from voting on this question. All in favor will say Aye, contrary No. The Ayes have it and the excuse is granted. The Secretary will report the result.

The Secretary — Ayes, 118; Noes, 33.

The President — The revised Constitution as read to the Convention having received the affirmative votes of a majority of all the delegates elected to the Convention, is adopted.

Mr. Wickersham — I offer the following resolution and move its adoption.

The Secretary — By Mr. Wickersham: Resolved, That the President and Secretary of the Convention be authorized and directed to attest the Constitution adopted by the Convention on the tenth day of September, 1915, with an appropriate certificate of the Secretary attached thereto as to its adoption, and to deliver the same to the Secretary of State for record and deposit in his office, and Resolved, That, for the purpose of further authentication, the Constitution be signed by the members present and that the members not in attendance be permitted to affix their signatures thereto in the office of the Secretary of State at any time before the second day of November, 1915.

The President —All in favor of the adoption of the resolution will say Aye, contrary No. The resolution is agreed to.

Mr. Berri — Mr. President, the Printing Committee presents the following report and asks its immediate adoption.

The Secretary — Mr. Berri reports in favor of the passage of the following resolutions: Resolved, That there be printed for the use of the Convention 300 additional copies each of the following proposed amendments: Nos. 841, 842, 843, 844, 845, 846, 848, 850, 851, 852, 853, 854, 855, 857, 858, 859, 860, 862, 863, 864, 865, 866, 868, 869, 870; and 300 additional copies of the Record, Nos. 86 and 88, and 100 additional each of Records Nos. 1 and 91.

The President —All in favor of the adoption of the resolution reported by the Committee on Printing will say Aye, contrary No. The resolution is agreed to.

Mr. Berri — There is a further resolution.

The Secretary —Also the Committee on Printing recommends the following: Resolved, That the Secretary of this Convention

be and he hereby is directed to have printed under the direction of the President such number of copies of Document No. 52, containing the proposed Constitution, additional to those already obtained, as may be necessary, to supply members of the Convention with such number of copies for distribution as may be desired by members, not, however, exceeding in the aggregate 10,000 copies; and, in the event of the demand exceeding the number of copies provided for by this and the preceding resolution, the Secretary is directed to apportion the same among members requesting copies in such manner as the President may direct.

Mr. Cullinan — I would like to inquire if it may not be feasible in the printing of these copies to prepare them in such a way that what is new matter may appear italicized?

The President — May the President make an explanation? Under the statute passed at the last session of the Legislature, the Secretary of State is directed to cause copies of the proposed Constitution to be printed in the manner indicated by Mr. Cullinan, a sufficient number of copies to put one in the hands of every voter in the State. I understand that the Secretary will find it necessary to print a million and a half to two million copies in that manner so that it will be available in that form without our printing the entire edition.

Mr. Wiggins — I was about to make the same inquiry which Mr. Cullinan did. In view of the explanation made by the President, it would seem to me wholly unnecessary to distribute this document referred to as the revised Constitution, because it is impossible for us to see in looking it over what is the old matter and what is the new. I think the people will be largely interested in the work of the Convention and it should be so indicated in the document what has been changed in the Constitution and not to have the Constitution as a whole without any explanation of what is old and what is new matter. For that reason, it seems unnecessary to print these 10,000 documents.

Mr. Berri — Mr. President, in answer to Mr. Wiggins, the Printing Committee has presented this resolution in response to the suggestion made by the Committee on Revision, of which Judge Rodenbeck is chairman. It is practically in the same form that the same matter was printed twenty years ago. It is almost the same resolution that was presented at that time. The intention is this: We are experiencing a great demand for the completed work of this Convention. It is not intended to use the italicized portions or the portions that would be in brackets. It is the Constitution we have adopted here, our work, and, as I understand it, it is not proper form for us to indicate in this document, No. 52, what is new and what is old. It was not done before. It will be

done by the Secretary of State in his advertisements and in what he sends out for the people to vote upon. It is in order to satisfy this demand that this is offered. It will be subject to the decision of the President as to how many copies shall be printed, and that, of course, will depend upon the demand to the Secretary. The resolution, as I say, was suggested to us by the Committee on Revision.

The President —All in favor of the resolution will say Aye, contrary No. The resolution is agreed to.

Mr. Wickersham — Mr. President, I move that we take a recess.

The President — Mr. Wickersham moves that the Convention take a recess until half-past two. All in favor will say Aye, contrary No. The motion is agreed to and the Convention stands in recess until half-past two o'clock.

Whereupon, at 1:30 p. m. the Convention took a recess until 2:30 p. m. of the same day.

AFTER RECESS—2:30 P. M.

The President —The Convention will come to order.

Mr. Wickersham — Mr. President, I suggest the absence of a quorum.

The President — The Secretary will call the roll.

Upon the call of the roll the following delegates responded: Adams, Allen, F. C., Angell, Austin, Bannister, Barnes, Barrett, Bayes, Beach, Bell, Bernstein, Berri, Betts, Blauvelt, Bockes, Brackett, Brenner, Bunce, Burkan, Buxbaum, Byrne, Clearwater, Cobb, Coles, Cullinan, Curran, Dahm, Dennis, Deyo, Dick, Donnelly, Donovan, Dooling, Doughty, Drummond, Dunlap, Dunmore, Dykman, Eisner, Endres, Eppig, Fancher, Fobes, Fogarty, Foley, Ford, Franchot, Frank, Gladding, Green, Greff, Griffin, Haffen, Hale, Harawitz, Heaton, Heyman, Johnson, Jones, Kirby, Landreth, Latson, Law, Leary, Leggett, Lennox, Lincoln, Linde, Lindsay, Low, McKean, McKinney, McLean, Manderville, Martin, F., Martin, L. M., Marshall, Mathewson, Mealy, Meigs, Mereness, Nicoll, D., Nixon, Nye, O'Brian, J. L., O'Brien, M. J., O'Connor, Ostrander, Parker, Parsons, Pelletreau, Phillips, S. K., Quigg, Reeves, Rhees, Rodenbeck, Rosch, Ryan, Ryder, Sanders, Sargent, Saxe, J. G., Saxe, M., Schoonhut, Schurman, Sears, Sharpe, Sheehan, Shipman, Slevin, Smith, A. E., Smith, E. N., Smith, R. B., Smith, T. F., Standart, Steinbrink, Stimson, Stowell, Tierney, Tuck, Unger, Vanderlyn, VanNess, Wagner, Ward, Waterman, Webber, C. A., Weber, R. E., Weed, Westwood,

Whipple, White, C. J., Wickersham, Wiggins, Williams, Winslow, Wood, Young, C. H., Young, F. L. President.

The President — One hundred and twenty-three delegates have answered to their names. A quorum of the Convention is present.

Mr. Parsons — Mr. President, I submit the unanimous report of the special Committee on Time and Manner of Submission of the Revised Constitution and move the adoption of the resolution contained therein.

The President — The Secretary will read the report.

Mr. Wickersham — I move to consider the report as read — it has been printed and distributed — unless it is desired that it be read *in extenso*.

Mr. Foley — Mr. President may we have it read?

The President — The Secretary will read the report of the Committee.

Mr. Foley — Mr. President, the report just read contemplates the separation of two propositions from the body of the Constitution. I desire to amend the report and the resolution to be adopted by providing for the separate submission of the socalled Home Rule provision relating to municipal government. This is contained in Article XV, Sections one, two and three. These sections relate to the grant of power and the right of cities to adopt their own charters. Section four, I think, should not be submitted separately. It prohibits the passage of special city laws, gives the right to the Legislature to delegate additional powers to municipalities and lays down some very salutary rules for the regulation of municipal government by the Legislature. I urge the separation in view of the importance of the proposition and in view of the opposition that may arise from certain sources, and of the desire of the people of the city of New York to go on record for or against this kind of self-government. Mr. President, I move to amend the resolution therefor by striking out the word "taxation" wherever it occurs and inserting in place of Article "ten" wherever occurring "Article fifteen, Sections 1, 2 and 3 thereof, relating to municipal government." Question three will then be entitled "municipal government," and the question relating to the adoption of the taxation article will be renumbered as Article four.

The President — The gentleman will present his amendment to the desk. This is a statute which we are now enacting and the language must be precise.

Mr. J. G. Saxe — Mr. President, I move that the resolution be amended by adding thereto the following provision.

Mr. Wiggins — Mr. President, I move to amend by providing that there shall be 18 questions submitted, each question shall cover each article of the Constitution as adopted and changed by

this Convention, so that there will be submitted to the voters 18 questions applying to each of the 18 articles in the Constitution.

Mr. Wickersham — Mr. President, I rise to a point of order. These amendments must be in writing. They are extremely technical; they cannot be intelligently passed upon unless they are in writing; the rule requires it, and I make the point of order that they cannot be accepted unless they are in writing.

The President —The Chair assumes that the written amendments will be submitted.

Mr. Wiggins — Mr. President, I will be through in a moment and I will then hand up my amendment in writing. It seems to me there is only one of two things to be done and that is that we adopt this Constitution as a whole and submit it to the people as a whole, or that we should permit them to vote on every article. It is unfair to Mr. Saxe and his tax article or to the article on apportionment, or any other article, that we should say that in our superior intelligence we will group together four or five articles and say you must accept or reject them as a whole, and then, like throwing a bone to a hungry dog, we throw out these two or three. It seems like a lack of faith in the work we have done, when we say we are skeptical as to this, we have some doubt on it ourselves, therefore, you may dissect this; but the others you must adopt as a whole or reject. Now, if the work of this Convention is to succeed as a whole, it seems unwise to proceed in that way. We should group together these articles. Mr. Foley has suggested that the home rule article should be changed in this respect. It seems proper. Many men have objected to the article increasing the governor's salary; others have objected to the article having a socialistic tendency, such as proposed by Mr. Parsons' Committee. Now, if every one of these particular articles on which objection is made gets 50,000 votes, it means 50,000 votes against all the articles together and these votes, coming from different persons and coming from the different sections opposed to them, would mean enough negative votes to destroy much that the people would otherwise be in favor of. The only object in grouping together that I can see is that some of the articles shall brace up and carry through the others. It seems to me, therefore, in principle, we should submit as a whole or give the people an opportunity to vote on every section.

The President —Will the gentleman send his amendment to the desk?

Mr. Marshall — I should like to inquire of the Chairman of the Committee whether the Committee has taken into consideration the fact that in many counties of the State the only method of voting is by voting machines. This resolution is based on the

theory that the voting is to take place by ballot only, and not by voting machines,— by printed ballot. Every provision is consistent with that theory only and it does not seem to cover the idea of voting with the machinery adopted in a large number of counties.

Mr. Parsons — Mr. President, my information is that there is provision in all the counties for voting by ballot.

Mr. Marshall — But that is not the exclusive method of voting. In many counties they vote only by voting machine.

Mr. Parsons — The ruling of the Secretary of State's office is that this Convention can determine how the Constitution shall be voted upon and your Committee thought it desirable that there should be a separate ballot box for the ballot on this Constitution and it would particularly call attention to the fact that they were voting on the Constitution if every elector was handed a ballot.

Mr. Marshall —Well, I only wished to know whether the Committee had given the matter due consideration. My thought is that in view of the fact that in many localities the voters have become accustomed to using the voting machines, by changing their method of voting, especially as far as that locality is concerned, there would be a smaller vote in that locality than there otherwise would be. I think it a mistake not to have made provision for voting either by ballot or voting machine according to the provisions of the statutes relative to that subject.

Mr. Lincoln — Mr. President, I will say for the benefit of Mr. Marshall and others who have his views on this matter, that in the county of Erie, or at least in the city of Buffalo, last fall we voted for delegates to the Constitutional Convention, by paper ballot, at the same time using for the regular elective offices the voting machines which are used throughout the entire city of Buffalo. That caused no inconvenience whatever, and on the contrary we had a very large and representative vote on the paper ballot which, as I say, we used coincidentally with the voting machine.

Mr. Cullinan — Mr. President, I would like to say for the information of the Convention that numerous bills with reference to abolishing voting machines were referred to the Committee on Suffrage and one of the reasons urged for abolishing the machine was that voting could not be successfully conducted upon Constitutional Amendments. I think the Committee was satisfied in laying all such bills upon the table, that all of the voting machines in use in this State, or likely to be used, would have abundant facilities for voting upon all the Constitutional Amendments irrespective of their number; and for that reason the bills were laid upon the table.

Mr. J. G. Saxe — Mr. President, I should like to say one word in favor of my amendment and explain it.

The President — Mr. Saxe, your amendment has not been read.

Mr. J. G. Saxe — No, it has not been read. I should like to have it read before I speak.

The Secretary — By Mr. J. G. Saxe: Insert at the end of page 6, the following: "The determination whether any of the three questions has received the number of votes requisite for the adoption thereof may be contested in the supreme court by any elector in an action in equity brought within three months after such election, against the secretary of state, and the judgment rendered shall be reviewable by the court of appeals."

Mr. J. G. Saxe — Under the statute law of this State there is absolutely no provision to-day whereby fraud could be corrected in case there was fraud in the coming election as to the submission of a constitutional amendment. That was held by the Court of Appeals in the case of Tamney against Atkins. We are authorized by the Constitution and the legislative act of 1913 to submit this whole question to the people. Under that general power of submission we undoubtedly have power to cover everything in connection with the submission and we certainly ought to make adequate provision so that if there should be a very small difference on some one of the questions the side which was injuriously affected might have the right of review, and that is the purpose of this amendment. I hesitate to propose a second amendment, and I won't do it, but I want to suggest to the Convention that under the Committee's proposal we will have three different ballots this fall: The general officers ballot; there will be this ballot with three questions on it, and there will also be the ballot for other questions submitted, for woman suffrage and perhaps a second question on it. It seems to me that, while I have not proposed an amendment to this end, we certainly ought to have all questions submitted to the people on woman suffrage on one ballot so that the voter might run down the four or five questions and mark yes or no opposite them, rather than have three ballots which are confusing and which will result in many blank ballots for the constitutional amendments or woman suffrage.

Mr. Marshall — I would like to make a further observation relative to the subject to which I called attention. I have no desire other than to avoid confusion and I desire to enable the largest vote possible to be brought out. Attention should be called to the fact that at this coming election the people are to vote on this proposed amendment relative to woman suffrage. There is also to be a vote as to whether or not there shall be issued $27,000,000 worth of bonds for canal terminals. In counties where they have voting machines these two subjects will be voted on by machine. Now, picture the confusion with which the ordinary

voter will be confronted when he finds two questions to be voted on by machine, and as to the other three they are to be voted upon by ballot. Would not the consequence be that the voter who votes by voting machine will entirely neglect the other three subjects? It seems to me there should be some uniform method of voting, and I most earnestly ask the Committee to give this subject careful consideration.

Mr. Wiggins — Mr. President, the reasons advanced by Mr. Marshall seem to be very sound, and I base my judgment upon a knowledge I have of voting conditions in the city of Middletown. It will work just the opposite if they resort to the ballot because the machines are so arranged that when the voter goes in and pulls the curtain behind him and votes on the ticket it will be impossible for him to get out until he shall have voted on the amendments and the mechanism will be so arranged before the voter leaves the booth that he must vote yes or no on at least one of the constitutional questions. That calls his attention to the questions, and he passes down the line and the other four or five or six or whatever number may be, and so instead of making a less number of votes for the constitutional amendments it will be just the reverse.

Mr. Lincoln — If I may be permitted to revert once more to the conditions in Buffalo: Last year we had the voting machines, as I have said, in each election district. The court ruled that the Constitutional Convention delegates must be voted for on paper ballots. That required that we have separate voting booths, compartments in each election booth for voting upon these paper ballots. We also had, by the way, a question which was voted upon concerning the commission charter, which was voted upon on the voting machine. So we went through all these various difficulties predicted here to-day and went through them without any trouble whatever. There was substantially the same vote for delegates to the Convention on these paper ballots as there was for the officers voted for on the voting machine and there was as large a vote as was to be expected on this question relating to the commission charter. This question, as I said before, was voted upon, for or against, on the voting machine proper.

Mr. Quigg — Mr. President, I move the following substitute for the committee's resolution and simply desire to say in respect of it that I should think the Convention would have the courage of its convictions, and should submit this document to the people in whole as it is, and for the purpose of a vote, on that question, I submit my substitute. I ask that it be read, Mr. President.

The President — The Secretary will read the resolution.

The Secretary — By Mr. Quigg: Resolved, That the revised Constitution adopted by this Convention be submitted to the

people for their adoption or rejection at the general election to be held on the second day of November, one thousand nine hundred and fifteen, in the manner following, that is to say: The submission shall be in one proposition: Shall the revised Constitution be adopted?

Mr. Brackett — For the purpose of an explanation from the committee in charge of the bill I move to strike out on page 3 the second question and I ask the chairman of the committee what possible process of reasoning requires or suggests that that amendment should be submitted separately, when if it is rejected it leaves the apportionment article precisely as it is? In other words, it is utterly insignificant as far as the result goes whether the present amendment pending is adopted or rejected. If it is adopted it adopts precisely the same method as in the existing Constitution, and if it is rejected of course it leaves the present one standing. Now, of all the sections of the whole instrument from beginning to end, I should think that was the poorest one to submit separately, inasmuch as it does not make the slightest difference which way the vote is.

Mr. Parsons — The result of the vote is correctly stated by Mr. Brackett. It was thought by the committee there were many people in the State who would not desire to vote for the Constitution; many people in New York who would not desire to vote for a revised Constitution which had that provision in it. Your committee also found the Republican State Convention a year ago in its platform called for the separate submission of the apportionment article and in harmony with that platform it therefore incorporated that provision so that the apportionment should be voted on separately.

Mr. Bernstein — It seems to me there is not any reason or logic for the suggestion of the committee. There is no more reason why the committee should select these two separate articles and say they should be submitted separately to the people than there is that they should have selected any one or more of the other articles. It appears there is some opposition to the taxation article somewhere and to the reapportionment article. But, Mr. President, there is opposition to every article in one direction or in another. Now it seems that the only logical method of submitting the question to the people is one of two ways: Either to submit the entire Constitution as we submit it to the members of this Convention to-day, asking them either to adopt or reject it or to submit in separate articles as they submit the Constitution of the State of Ohio. There is a great deal to be said for the latter method because it would finally submit to the people each of the propositions upon which we have differed in this Convention and

we would get their ultimate decision upon each of them. There is also something to be said for submitting the proposition as a whole. That is to say, the people selected at the last election a body of representatives to revise the Constitution, to frame a new Constitution for them. It is assumed that they have confidence in their representatives and that the Constitution that has been adopted and approved by their representatives is the Constitution upon which they desire to vote either in acceptance or in rejection. I submit that either one of these two methods of submission would be far better than the method suggested by the committee.

Mr. Barnes — I should like to inquire of the Chair whether the practice which we used in Committee of the Whole with regard to amendments is to be the practice here. We are offering amendments and not voting upon them, as if we were in Committee of the Whole.

The President — The Chair has assumed that the same course would be followed as to the amendments submitted in the order in which they are received at the desk.

Mr. Barnes — The objection to the method which the Chair says shall be the rule, the one we used in Committee of the Whole, is that it is very apt to complicate the questions at issue because, voting upon them in order, you are very apt to get a result you do not desire, and in that connection, having the floor, I desire to offer an amendment, and will of course accept the rulings of the Chair in regard to the matter. My thought in relation to this question of submission was that all subjects that were practically uncontroverted here, accepted by the almost unanimous vote should be submitted as one proposal, and then those matters which were the subject of controversy here should be submitted separately, in order that each voter should be permitted the opportunity to express himself in an affirmative or negative manner and not by the method of submission be compelled perhaps to express himself in a negative manner, when he does not so desire, by voting against the whole Constitution. Take for instance my own case as an individual voter: If the provision in Article III, section 29, which provides that the Legislature may prohibit a man from conducting a lawful occupation if he lives in a house with two other families, remains, I could not vote for it and could not vote for a Constitution which contained that prohibition on the individual liberty of any citizen of this State. Also, section 19, which provides for an extension of Workmen's Compensation to cover occupational disease: I tried to point out in the debate that compensation for occupational disease regardless of fault follows an actual sequence to the establishment of compensation regardless

of fault on the part of the employee; and so on, step by step, as I tried to show, you come in the last analysis to payment by the State to those persons who are unemployed. I therefore do not think it is just to any of the voters of this State to ask them to vote on a question of a Governor — as to whether the classification of the State officers should take place as I believe it should take place, and the Governor made more responsible so that the voters may know where to place the blame for error and where to place the credit for success. That such a man, situated as I am for example, wishing to vote for that particular amendment, may be disbarred by the provisions of the report of the Committee of which Mr. Parsons is chairman by introducing his pro-socialistic proposals from voting on this amendment. I therefore move that Article III, section 29, be submitted as question 4; and section 19 of Article I be submitted as question 5.

The President — The question is on Mr. Foley's amendment. The Secretary will read.

The Secretary — By Mr. Foley, on page 3, line 12. In the sentence "The proposed new article X, relating to taxation," strike out the words "ten relating to taxation" and insert in place thereof "fifteen, sections 1, 2 and 3 thereof, relating to municipal government". On page 4, under question 3, strike out the word "taxation" and insert in place thereof the words "municipal government". On line 3, strike out "article X", and insert in place thereof "Article XV, sections 1, 2 and 3". In line 4, strike out the word "taxation" and insert "municipal government". On page 5, at the bottom of the page, under question 3, strike out the word "taxation" and insert in the place thereof "municipal government". In the sentence "Shall the proposed new article X, relating to taxation be approved?" strike out "ten" and insert "fifteen, sections 1, 2 and 3." Strike out the word "taxation" and insert in place thereof "municipal government". On page 6, under question 3, strike out the word "taxation" and insert "municipal government". In the sentence "Shall the proposed new article ten relating to taxation be approved?", strike out "ten" and insert "fifteen, sections 1, 2 and 3 thereof". Strike out the word "taxation" and insert in place thereof "municipal government". Also renumber question 3, taxation occurring as question number 4.

Mr. Foley — The Convention will note that I do not propose to eliminate question 3. I simply renumber the taxation question as number 4, so we are now voting simply on the separate submission of the Home Rule article.

Mr. F. L. Young — Mr. President, as a member of the Committee making this report, I desire to make a brief statement

before any vote is taken. The work of the Committee is outlined by the present Constitution, which reads as follows: "Any proposed Constitution or constitutional amendment which shall have been adopted at such Convention shall be submitted to a vote of the electors of the State at the time and in the manner provided by such Convention." One of the first things considered by the committee — I may say, that every suggestion made on the floor since this report had been handed up was fully considered by the committee. Nothing has been suggested here that was not weighed by the committee having this matter in charge. The question of the voting machine was discussed and we deliberately decided that the work of this Constitutional Convention was a work that the people should pass on by a separate ballot. The Legislature has presented two proposed amendments as already referred to by Mr. Marshall and one proposition. We wish to have no interference with the legislative proposals by our proposals and this report particularly you will observe, provides that the ballot which embraces propositions that this Convention puts forth, shall be marked "Propositions submitted by the Constitutional Convention." The voter therefore will have no difficulty in deciding as to what comes from the Legislature and what comes from this Convention; and but one ballot box will be used, because every proposition which comes from this Convention will be on one paper ballot similar to the one I hold in my hand, with three questions on it, if we adopt the report of the committee, each of which can be voted on very quickly and very intelligently by every voter. I doubt very much whether there is anything in the law that would justify the adoption of this amendment or the one by Mr. Saxe. As I read the Constitution our jurisdiction ends with the submission of the proposition. I think the insertion of any clause which provides for the review of any vote would be futile and nugatory, for we have no jurisdiction beyond the submission. That belongs to the court, and that, notwithstanding the Court of Appeals says there is no law whereby it may be reviewed. The amendment offered by Mr. Wiggins, providing for a different division, let me say with regard to that, that there is an entire misapprehension on the part of Mr. Wiggins and that is that the apportionment and taxation articles were selected because there was fear that the Constitution would be harmed if these were left in the general body of the Constitution. Far from that. We understood that the proposition of the Taxation Committee was something which was new and very far-reaching. It inaugurates an entirely different system of taxation, provided it is carried: and some of the opponents of the amendment on the floor of this House asked that it be submitted separately in order that it might

become the special object of discussion. And so far as the apportionment article goes I want to say that the apportionment article was separately submitted not because we thought it amounted to anything, but because it was a concession demanded by the minority of this House. They wanted an opportunity to vote on it, and, as they say, to correct "the crime of 1894." Now, we all admit, and they admit it amounts to nothing and still they say it will please them if they have an opportunity to vote on it by itself. These are the reasons that actuated the committee in presenting this report, and as a member of that committee I trust that every amendment that has been offered here will be voted down and that the submission will be made in accordance with the suggestion by the committee.

Mr. Stimson — Mr. President, although I am not a member of the committee, and have not been familiar with all the reasons which have actuated it in reaching its conclusions — it seems to me that their solution here is an eminently practical and sensible one and follows out the line, a very clear line of principle in the differentiation that they have made. Now, when the Committee of Thirty was considering this question — and it considered it for several weeks and discussed it quite at length, and when it was afterwards incorporated in the platform of the Republican party, as I recall it, it reached the conclusion that there were two classes of questions which might be separately submitted to the voters in respect to a Constitution, separately from the rest of the Constitution. I am speaking from memory. I have not been able to look up within the last day or two that platform, but my recollection is quite clear that those two classes of cases thus differentiated were stated to be questions which involved partisan or local controversies, and that by inference it left the decisions of all other questions to the united agreement of the representative delegates who were to meet and affirm the Constitution. It seems to me that that distinction rests upon a clear line of principle, and it seems to me it has been carried out by this committee. One of these questions represents a partisan issue, as far as any issue is contained whatever. It certainly is an issue upon which partisan feeling has been excited, and, as was shown by the debate here this morning, it is an issue as to which many citizens of this State may desire to cast their vote without regard to the rest of the Constitution. The other separate question is thought to be one which involves a difference of viewpoint between the residents of New York city and the residents of the rest of the State. It is thought to be the fact that in one part of the State a larger amount of one class of personal property might be owned by the citizens thereof, less susceptible of concealment or evasion than in another

part of the city, and whether or not from that reason there is thought to be quite a distinct local difference of viewpoint as to that question, which might well justify its being submitted separately. Now, as to all of the other questions, — and I have listened very carefully to the arguments presented here this morning, as the gentlemen explained their votes: It seems to me that while there are acute differences of opinion, they are only those differences of individual opinion which it is the business of representative government to meet and settle within the four walls of a convention hall. That is what we have been doing here this summer. We believe in representative government. We have been most assertive and vociferous in saying so. And now after we have been spending that length of time in harmonizing the different views of the 168 men that have met this year in this room, to go out and unload ourselves upon the electorate of the State seems to me to be violative of the purpose for which we were sent here and violative of that fundamental purpose and principle of representative government. Mr. President, I think it is our duty, so far as possible, to present to the people of this State the united and harmonious views on these non-partisan and non-local questions which have been submitted to us by the people.

Mr. Brackett — Under the rule which the delegate stated in his argument, I would like to ask does he really and truly think the question of the short ballot is a test question. I would like to ask further,— I will ask him to answer two questions in one if he will — as to whether the great majority of this Convention, being willing to make a concession to the Democratic minority, would not it be well to make a concession to some fellow-partyites up the State?

Mr. Stimson — In answer to the gentleman's first question, I will state very clearly that, in my opinion, the question of the short ballot, while it has involved individual differences of opinion, has not involved any question of partisanship or difference of viewpoint between the different parties represented in this room or between the different localities of the State. It is purely an individual difference of opinion.

Mr. J. G. Saxe — I understood before I introduced my proposed amendment, that the members of this committee had accepted it. I spoke to Mr. Parsons and pointed out what would happen if this amendment were not accepted. I hope the committee will accept it. Let me tell you what the importance of the amendment is. If on any single one of these three questions the vote is ten for or ten against, and any of us have absolute legal proof that there are 1,000 fraudulent votes backing up that ten, there is no court in the State, no means of procedure in the State

by which you can review that majority of ten unless we in our resolution do, or attempt to do, something which will meet that situation. That has been held squarely by the Court of Appeals of our State in two different decisions in the last two years, and it is absolutely important, absolutely indispensable that we do at least the best we can to have some review in case it becomes necessary. The only suggestion that has been made in opposition to this absolutely plain proposition is that made by the gentleman from Westchester, Mr. Young, who I understood has also accepted my amendment, and that is that there may be some doubt as to our power. I said to him frankly that there is a slight doubt as to our power. We looked that up very clearly a month ago and I thought the committee was going to take care of it or I would not have brought it to your attention. There is some slight doubt as to our power but under the Constitution and under the legislative act we have the full power to determine all questions in relation to the submission. I claim, and other members of this Convention who are better lawyers than I claim, that the question of submission includes everything from the time you submit it to the people until you get the final vote of the people. That being so, it necessarily includes the right to count the vote. Assuming, however, that that is a controversial question, the fact still remains that we should go the farthest step forward that we can go to protect the vote against fraud. If we do not do anything or do not try to do anything affecting fraudulent votes, I want to say that in the case of Tamney against Atkins and in the Schiefflin case it was held that there was absolutely no right of review which would exist in case there was only a majority of ten. There ought to be some provision which would give us a court review.

Mr. M. J. O'Brien — I just want to say a word to the delegates in support of the amendments suggested by Senator Foley. It seems to me all of us would like to see successful the result of the five months that we have spent here in endeavoring to give the people that meed of relief to which we think under a Constitution they are entitled, and that we should do everything we can to make that work successful. The only suggestion I have heard against submitting this home rule problem, which was one of the controverted questions, was that there were only selected two questions, one in connection with the question of apportionment, and the other taxation, and, with respect to the latter, Mr. Young very frankly said that the reason why that was to be separately presented was because it was a new question. I ask the delegates here present whether the question of home rule is not a new question. It is one of the questions, in my opinion, upon which more

controversies will turn than almost any other question we have in this Constitution. I say to the gentlemen here present that upon the three controverted questions of taxation, apportionment, and even home rule, if we can save the balance of this Constitution we will have rendered a signal service, and will have justified our coming here and assembled. But if we leave it so that, for any reason, because of an issue that may spring up around this home rule, the rest of the Constitution would be endangered, I think we would all regret it. As to these other questions which have been suggested here, it is very proper that these three questions should be taken out and presented in the way suggested, separately. I am in accord with the view of the committee in making the report, in limiting the number of questions, for this reason — a very good one — that most of the other provisions, those relating to the legislative and executive branches of the government, are so interrelated that we cannot separate them. You cannot separate those questions as they have now been welded together. The people are going to take up the question of the system of administration as it is presented, and I think they can vote on that as a whole. But those questions can, without any injury to those interrelated questions, including home rule, be separated from the general proposition, and the people be permitted to express themselves in the manner that they think is proper and best in the interest of the State.

The President — The question is upon the amendment offered by Mr. Foley.

Mr. Parsons — The committee sought in its report to interpret the will of those in this Convention who desire to see the Constitution adopted. We started with the proposition that we should follow the precedent of 1894 and submit as few propositions as possible. In 1894 three propositions were submitted — apportionment, canals and the rest of the Constitution. The apportionment matter in this Constitution was treated, as it was twenty-one years ago, as a partisan matter. In the spirit of fairness which we have attempted to observe, it seemed proper that we should give an opportunity to vote on that separately, even though, if the vote should be against it, the same restriction would continue in the Constitution. As to the article on taxation, ever since we adopted that in the Committee of the Whole there has been talk that it would be wise to submit it separately; while it probably would be adopted, very likely would be adopted, still it was not understood and therefore should be submitted separately. The committee took pains to gather information from members of the Convention as to what should be done. There were suggestions of other things to be submitted separately, but the only substantial body of opinion in favor of submitting things separately

was as to taxation and apportionment. Then there was some request from the minority that the home rule proposition should be submitted separately, but the opinion of the majority of those who wished to see this Constitution adopted was that the home rule proposition should not be submitted separately; that it was one of the things that had been promised and that it should be put to the people with the other things which we promised them. With all due respect to those who hold opposite opinions on the matter of home rule, the Committee was unable to see that there could be any serious objection on the part of the members of this Convention to including home rule with the others. If they wish to vote for home rule then they will vote for it with all the other things which have received a majority vote of the members of both parties in this Convention. If the home rule delegates from the city of New York wish to vote against home rule — it may not go as far as some members of this Convention might wish, but it goes a very great distance. Does this Convention believe that because in some details members disagree with it, the people of this State wish to go to the great expense of another Constitutional Convention? If, therefore, we are to follow the precedent of submitting the few matters — as few as possible — to the electors of the State, it comes down to the three things which the Committee has reported, and in reporting which they feel they have embodied the sentiment of a majority of the Convention.

Mr. M. Saxe — Were it not for the misrepresentation that has gone out with respect to the article on taxation, I would not oppose the recommendation of the Committee, but I would say it is most unfortunate that a body of intelligent men such as compose this Convention has not sufficiently studied the question to realize what we are doing in the interest of the people of the State by this article on taxation. Let me remind you, Mr. President, that in 1867 the Constitutional Convention submitted to the people of this State the proposition that real and personal property should be subject to a uniform rule of assessment and taxation. That proposition was a mistake on the part of the Convention. The people were wiser than the delegates to that Convention and they rejected that proposition. Why? Because even in that day they began to see that a general property tax was a failure and when the Convention of '67 tried to impose on the people of this State a uniform taxation of real and personal property, the people, in their superior wisdom, rejected it. Now why not take a lesson from that? All we are doing by this article on taxation is to make it possible to break down the personal property tax. We are making it possible for the Legislature to provide a substitute for it. The people will be willing to pay their taxes

if they are taxed fairly, properly and equitably. That is the reason your personal property tax will not work. It is not a fair and square tax. The people know it and have vetoed it. Mr. President, all we are doing is to put the power in the Legislature to treat the question properly. We know it cannot be done under the present Constitution, as the Court of Appeals has pointed out in two leading cases. Therefore, I say it is most unfair that the misrepresentation with respect to the taxation article has gone around. For that reason I resent the submission of it as a separate question. Could it be treated fairly and squarely, I haven't any doubt as to the issue, judging by the superior wisdom of the people when the Convention of '67 submitted its conclusions. But, Mr. President, with the misrepresentation that has gone out, with it being singled out as it is with the article on apportionment, which does not mean anything, so far as the vote is concerned, because it leaves everything as it is, I say it is extending an invitation to those who will not take the care to study the question to register their disapproval of something that is in the interests of the people of the State.

The President — The question is upon the amendment offered by Mr. Foley.

Mr. Newburger — I should like to say just one word in support of Senator Foley's amendment. I hold no brief for any class of employees in the city of New York, but it does seem to me that the chances of success for this Constitution are being seriously impaired by submitting the home rule article as a part of the entire Constitution, for this reason: There are approximately 7,500 firemen in the city of New York; there are approximately 11,000 policemen in the city of New York. Before this Constitution is considered, before it is even submitted to the people it has something like 75,000 or 80,000 enemies. It seems inconceivable to me that men of the knowledge, information and judgment of the members of this Committee should be willing to take the chance of having 75,000 or 80,000 men, employees of the city of New York, opposed to it before it is even submitted, because the general impression is in the city of New York to-day that the right of court review that these men have, while it is not being taken away by the Constitution, the members of this Convention are encouraging administrations to come in the city of New York at some time in the future to take away this right of court review. I know whereof I speak when I say that the sentiment is growing and I hope the amendment will prevail.

The President — The question is on the amendment offered by Senator Foley. All in favor of the amendment will say Aye, contrary No. The Noes have it, and the amendment is rejected. The Secretary will read the next amendment.

The Secretary — By Mr. J. G. Saxe. At the end of page 6, add the following: The determination whether any of the questions has received the number of votes requisite for the adoption thereof may be contested in the Supreme Court by any elector in an action in equity brought within three months after such election against the Secretary of State, and the judgment rendered shall be reviewable by the Court of Appeals.

Mr. J. G. Saxe — Mr. President, I rise to a question of information. I would like to know whether Mr. Parsons, for the Committee, accepts the amendment?

Mr. Parsons — I have no authority from the committee to accept the amendment and I doubt whether we have the power to confer any such jurisdiction, as I stated to the gentleman when he spoke to me about the matter. If we had the power, I think it would be a suitable amendment.

Mr. Wickersham — Mr. President, I think it is very desirable; if we have the power, we ought to exercise it. I think we ought to adopt the resolution, assuming that we have the power. It is not clear that we have not. It seems to me that is a wise suggestion.

The President — All in favor of the amendment offered by Mr. Saxe will say Aye, contrary No. The Ayes appear to have it. The Ayes have it and the amendment is adopted. The Secretary will read the next amendment.

The Secretary — By Mr. Wiggins: Resolved, That each article of the Constitution as adopted by this Convention be submitted to the electors of the State separately, so as to permit an affirmative or negative vote upon each article.

The President — All in favor of the motion of Mr. Wiggins will rise and remain standing until counted. The members will be seated. All opposed will rise. The gentlemen will be seated. The amendment is manifestly lost. The Secretary will read the next amendment.

The Secretary — By Mr. Quigg: Substitute for the resolution the following: "Resolved, That the revised Constitution adopted by this Convention be submitted to the people for their adoption or rejection at the general election to be held on the second day of November, one thousand nine hundred and fifteen, in the manner following, that is to say, the submission shall be in one proposition, as follows: 'Shall the revised constitution be adopted?'"

The President — All in favor of the adoption of the substitute offered by Mr. Quigg will rise and remain standing until counted. The gentlemen will be seated. All opposed will rise. The gentlemen will be seated. The amendment is manifestly lost. The Secretary will read the next amendment.

The Secretary — Mr. Brackett moves to amend said resolution by striking out question No. 2 thereof.

The President — All in favor of the amendment will say Aye, contrary No. The amendment is lost. The Secretary will read the next amendment.

The Secretary — Mr. Barnes moves to amend said resolution as follows: "Resolved, That Section 29 of Article III be submitted as question 4; and, Resolved, That Article I, Section 9 be submitted as question 5."

The President — All in favor of the amendment will rise and remain standing until counted. All opposed will rise. The gentlemen will be seated. The Secretary reports the vote as 27 Ayes, and 57 Noes. The amendment is lost. The question now is upon the adoption of the report of the committee and of the resolution reported. All in favor will say Aye, contrary No. The Ayes have it, and the report of the committee and the resolution are adopted.

Mr. Wickersham — I submit the following resolution and move its adoption.

The Secretary — By Mr. Wickersham: "Resolved, That the resolution of the Convention this day adopted prescribing the time and manner of submission of the revised Constitution heretofore adopted by the Convention be authenticated by the signatures of the President and Secretary of the Convention and be filed by them in the office of the Secretary of State."

The President — All in favor of the resolution will say Aye, contrary No. The resolution is agreed to.

Mr. Wickersham — I submit the following report of the Committee on Preparation of an address to the people.

The Secretary — To the Convention: The committee appointed pursuant to resolution adopted on September 3, 1915, to prepare and report to the Convention a form of address to the people of the State beg leave to report the annexed proposed address and to recommend its adoption by the Convention. Address to the People of the State of New York —

Mr. Wickersham — Mr. President, this draft has been printed and on the desks of all the members since this morning. Unless it is desired that it be read at length, I would suggest that it be considered as read and submitted to the action of the Convention.

The President — The question is on the submission of the address as printed and distributed.

Mr. Quigg — I thought the motion was simply that it not be read.

Mr. Wickersham — My suggestion was that it be considered as read.

Mr. Quigg — I desire to call attention to some expressions in it.

Mr. Sheehan — It is open to amendments after its being considered read.

The President — Is there objection to the report being considered as read? The Chair hears none and the address stands as read by the Convention. The report of the committee above referred to follows: The Delegates of the People of the State of New York in Convention Assembled to revise and amend the Constitution of the State present to the People a revised Constitution of eighteen articles. We have, in the revised Constitution submitted, retained the general framework of the existing Constitution, and have recommended such modifications as in our opinion are essential to the improvement of the government of the State and to remedy the most striking deficiencies of the existing system. Besides striking out the obsolete matter, we have considered upwards of 800 amendments proposed, and have adopted 33. The most important of the amendments proposed deal with:

1. The reorganization of the State government on its administrative side into seventeen civil departments, a reduction in the number of elective officers, and provisions for the appointment of all other officers.

2. Provisions affecting the Legislature, designed to remove from it the consideration of local matters and private claims, and to restore it to its true function of enacting laws of general application and of making appropriations for the conduct of the State government.

3. A careful regulation of and change in the method of making appropriations for the expenses of the State, by means of an annual executive budget.

4. Improvements in the method of contracting indebtedness for the purposes of the State, and the substitution of serial for sinking fund bonds.

5. The grant to cities of as large a control of their own municipal government and affairs as is consistent with State sovereignty.

6. Authority in the Legislature, with the approval of the electors of such county, to provide for any county optional forms of government and prohibiting the passage of local or special laws relating to a county, except at the instance of its local authorities.

7. Reform in civil procedure in the courts of the State, and provisions affecting the organization and jurisdiction of the courts, designed to prevent delays in the administration of justice and to simplify litigation and make it less expensive.

8. State control over the assessment of taxes on personal and intangible property.

9. The protection of the natural resources of the State under a conservation commission.

10. Provisions for the benefit of wage earners by creating a department of labor and industry, by extending the benefits of the

Workmen's Compensation Act to embrace occupational diseases, and by empowering the Legislature to regulate or prohibit manufacturing in tenement houses.

A number of other matters of only less importance than those above referred to also have been embodied in the proposed amendments.

I. The modifications we recommend in the organization of the executive department present to the people a plan for ending the present unsystematic, wasteful and irresponsible State government, under which its executive and administrative agencies are distributed among more than one hundred and fifty bureaus, departments, commissions, boards and officials. Many of these involve duplication of the work of others. We substitute for them a concentration of all such activities into seventeen departments. Of these, two, namely, the Departments of Law and Finance, are to be administered by the Attorney-General and the Comptroller, respectively; four, namely, the Departments of Labor and Industry, Public Utilities, Conservation, and Civil Service, are under the direction of commissions composed of one or more commissioners appointed for terms extending beyond that of the Governor. They are vested with both legislative and administrative functions. For these reasons, the consent of the Senate is required to their appointment by the Governor, and they are made removable by the Governor only for cause and after an opportunity to be heard. The Department of Education is continued under the administration of the University of the State of New York, with powers to be exercised by regents chosen by the two houses of the Legislature voting jointly for terms of nine years, one of them expiring each year. Each of the remaining ten departments is placed under the direction of a responsible head appointed and removable by the Governor.

We have applied the principle of the short ballot, by taking the Secretary of State and the State Treasurer out of the class of elective officials, and abolishing the office of State Engineer and Surveyor and transferring his duties to the Department of Public Works, the head of which is to be appointed by the Governor. The elected State officials will thus be the Governor and Lieutenant-Governor, Attorney-General and the Comptroller, all for the term of two years.

We have provided that at the session immediately following the adoption of the Constitution, the Legislature shall provide by law, for the appropriate assignment to and among these seventeen several departments, of all the civil administrative and executive functions of the State government, except those of assistants in the office of the Governor; that no new departments shall hereafter

be created, and that any bureau, board, commission or office hereafter created, except assistants in the office of the Governor, shall be placed in one of the departments so enumerated.

The elective State officials in office at the time the new Constitution takes effect are to continue in office until the end of their respective terms.

II. We have extended the classes of private or local bills which the Legislature is prohibited from passing so as to embrace bills granting to any corporation, association or individual the right to prove a claim against the State, or against any civil division thereof, and bills authorizing any civil division of the State to allow or pay any claim or account. We have forbidden the Legislature to audit or allow any private claim or account against the State or a civil division thereof, while authorizing it to pay such claims or accounts against the State as shall have been audited and allowed according to law. We have provided that no public moneys or property shall be appropriated for the construction or improvement of any building, bridge, dike, canal, feeder, waterway, or other work, until plans and estimates of the cost of such work shall have been filed with the Secretary of State by the Superintendent of Public Works, together with a certificate by him as to whether or not in his judgment the general interests of the State then require that such improvements be made at State expense.

We have abolished the provisions for emergency messages by the Governor, and have required that no bill shall be passed or become a law unless it shall have been printed and upon the desks of the members in its final form at least three calendar legislative days prior to its final passage.

We have required each House of the Legislature not only to keep a complete journal of its proceedings, but also a record of its debates, and promptly to publish the same from day to day.

The salary of members of the Legislature was fixed at $1,500 per annum in 1875. In view of the changes in the value of money and the largely increased cost of living during the forty years since that date, we have increased that compensation to $2,500 a year, besides the actual railroad fare of the members paid in going to and returning from their homes not oftener than once a week during the session of the Legislature. An additional reason for this increase was furnished by the argument, earnestly pressed upon us, that many competent and desirable citizens cannot afford to become members of the Legislature at the present rate of compensation. We have also increased the salary of the Governor, after January 1, 1917, to $20,000 a year, as more suitable to the dignity and responsibility of the office of Chief Executive of the State.

III. We have proposed a radical change in the method of providing for the necessary expenditures of the State. Instead of

leaving the Legislature to make appropriations without any comprehensive and systematic study of the needs of the various departments of the State government, and the sources of its revenue, leaving to the Governor the power and duty after the adjournment of the Legislature to go over the appropriation bills and cut out items which appear to him to be unnecessary or improper, we have sought to restore the true American ideal which accords with the genius and history of our institutions, by requiring the preparation by the heads of departments in advance of each legislative session of itemized estimates of appropriations to meet the financial needs of each department for the ensuing year, and the preparation by the Governor, after public hearing, for submission to the Legislature, of a complete budget or plan of proposed expenditures and estimated revenues. We give to the Governor and the heads of the departments the right to appear before the Legislature and be heard respecting the budget, and make it their duty so to appear if requested by either House. We give to the Legislature the power to reduce or eliminate, but not to increase any item in such proposed budget. The appropriation bills enacted after this procedure are to become laws without the Governor's approval. Appropriations for the expenses of the judiciary and the Legislature are left subject to the Governor's veto power as at present. We have sought by these provisions to substitute responsible for irresponsible government; appropriations based upon thorough investigation, comprehensive information, and in the light of informed public discussion followed by deliberate action in the early period of the legislative session, for the present complex, irresponsible system of legislation, often by secret conference in committee and hurried enactment with the aid of emergency messages in the closing hours of the session. We believe that these provisions must lead to the elimination of many useless or improvident expenditures, and result in a greater economy in the administration of the State finances.

IV. We have also recommended provisions changing the present cumbersome, uncertain and costly system of providing sinking funds for the retirement of bonds issued by the State, by requiring all bonds of the State to be issued in serials not extending beyond the estimated life of the work or improvement for which the debt is contracted, payable in equal annual instalments, and therefore requiring no sinking funds.

V. We have proposed as large a measure of home rule for the cities of the State as is consistent with the recognition and retention of the sovereignty of the State. We provide that every city shall have the exclusive power to manage, regulate and control its own property, affairs and municipal government. Such power shall

include, among others, the right to organize and manage the departments of the city government, and to regulate the compensation and method of removal of all city officers and employees, thus enabling them to obtain what is just and fair, both for themselves and the taxpayers, without the necessity in the first instance of application to the State Legislature. As a last resort, or as a matter of State policy, the Legislature retains power to redress just grievances by the enactment of laws applicable to all the cities of the State without classification or distinction. We have made it the duty of the Legislature by general laws to provide for the organization of new cities in such manner as to secure to them the exercise of powers thus granted. We provide a method for the adoption by existing cities of new charters for the exercise of such powers, which charters must be submitted to the Legislature and become effective if not disapproved by it. Among the powers so granted is that of adopting amendments to charters; but amendments which change the framework of the city government, or modify restrictions as to issuing bonds or contracting debts, must be submitted to the Legislature, and shall take effect as law sixty days after such submission, unless in the meantime the Legislature shall disapprove the same by joint resolutions. We prohibit the Legislature from passing any law relating to the property, affairs or municipal government of a city, except such as is applicable to all the cities of the State without classification or distinction, and we empower the Legislature to delegate to the cities, for exercise within their respective local jurisdiction, such of its power of legislation as to matters of State concern as it may from time to time deem expedient. We also require the Legislature to provide for the method and limitations under which debts may be contracted by the cities, counties, towns, villages and other civil divisions of the State, to the end that such debts shall be payable in annual instalments, the last of which shall fall due and be paid within fifty years after such debts shall have been contracted, and in no event for a period longer than the probable life of the work or object for which it is to be contracted.

VI. We authorize the Legislature by general law to establish different forms of government for any county not wholly included within a city, to become effective only when approved by the electors of the county, and to confer upon any elective or appointive county officer or officers any of the powers and duties now exercised by the town in any county, or by any officer of a town, relating to highways, public safety and the care of the poor. We have provided that no local or special law relating to a county or counties except those wholly included within a city, shall be enacted, except upon request of the governing body of the county or counties to be

affected. We have also authorized the Legislature by general laws to confer upon the boards of supervisors or other governing bodies of the several counties of the State such further power of local legislation and administration as the Legislature may from time to time deem expedient.

VII. We have sought to remove the basis for complaints of delays and undue expense in the administration of justice, by amendments dealing with (1) rules of procedure, and (2) the organization and jurisdiction of courts and judges. As to the first, we require the Legislature to enact at its next session a short and simple civil practice act which it may not alter or amend, unless at the request of the judges empowered to frame civil practice rules, except at intervals of five years, and then only after report by a commission appointed to consider the subject. We give to the judges of the Court of Appeals and Supreme Court exclusive power to make rules of court to regulate details of civil practice. By these provisions we not only do away with the confused and complicated mass of statutes which constitute the Code of Civil Procedure, but we substitute for a rigid statutory regulation of practice rules of court made to facilitate the progress of litigation without undue technicalities and delays.

(2) We recommend an increase in the number of justices composing the Appellate Division of the Supreme Court in the first department from seven to not less than ten nor more than twelve, and in the second department from five to seven. To supply this enlarged force, provision is made for the election of two new justices in the first district. In 1914, the Appellate Division in the first department disposed of 1500 appeals and 840 motions, more than double that of any other court in the State, except the Appellate Division in the second department, which in 1914 decided about 70 per cent. of that number. The changes in organization and increase in the number of justices recommended is essential to cope with this great volume of business.

The number of cases undisposed of in the Court of Appeals has been steadily increasing. It requires more than two years after appeal taken to that court before a case not entitled to preference can be reached by argument. There are now more than 600 cases pending before it. We recommend that the number of permanently elected judges be increased to ten, and that the three Supreme Court justices now sitting in the Court of Appeals by designation of the Governor be continued as associate judges of the court until the expiration of their respective terms, after which their successors shall be elected as associate judges of the Court of Appeals. For the purpose of disposing of the present accumulation of business, we require the Court of Appeals within three months

after the Constitution takes effect, to designate for temporary service in that court not less than four nor more than six justices of the Supreme Court, and thereupon to divide the Court of Appeals into two parts each of seven judges, each part having equal jurisdiction to hear and dispose of the cases which shall be distributed between them by the chief judge. When the accumulation of cases has been reduced to 100, but not later than December 31, 1917, the Supreme Court justices are to return to their court and the Court of Appeals is then to resume its normal condition as a single court. Similar provisions are made to deal with accumulations of cases in the future.

In order to facilitate impeachment of officers of the State in proper cases, we have provided that the Legislature, of its own motion, may convene to take action in the matter of the removal of a judge of the Court of Appeals or justice of the Supreme Court; that the Assembly, of its own motion, may convene for the purposes of impeachment, and that the court for the trial of impeachments may order all or any part of the testimony in any case to be taken and reported by a committee composed of members of the court, except that the impeached officer must be allowed to testify before the court if he so desire. Applying the principle that no man shall serve as judge in a cause in the outcome of which he has a personal interest, we provide that on the trial of an impeachment of the Governor or Lieutenant-Governor, neither the Lieutenant-Governor nor the Temporary President of the Senate shall act as a member of the court.

We have provided for the appointment by the Appellate Divisions in the first and second departments of Supreme Court Commissioners to act as referees or to determine the compensation to be paid when private property is taken for a public use, and to perform such other duties as may be devolved upon them by special order, rule of court or the civil practice rules.

We have increased the jurisdiction of county courts in common law actions for the recovery of money only from $2,000 to $3,000, and we have authorized the Legislature to confer upon them jurisdiction over actions against nonresidents having an office for the regular transaction of business within the county when the cause of action arises within the county.

Recognizing the greatly increased efficiency which has been realized by the consolidation of numerous small courts into single tribunals so organized that their entire judicial force may be kept occupied by the distribution of the business within the jurisdiction of the court among its various terms and parts, we have provided for the extension from and after January 1, 1917, over the whole city of New York, of the jurisdiction of the Court of General Sessions in and for the city and county of New York, the abolition of

the county courts of Kings, Queens, Richmond, and Bronx and the transfer to the Court of General Sessions of the criminal jurisdiction of those courts. We have also provided for the extension from and after January 1, 1917, over the whole city of the jurisdiction of the City Court of the city of New York, the transfer to it of the civil jurisdiction of the county courts of Kings, Queens, Richmond, and Bronx, and the increase of its jurisdiction in common law actions for the recovery of money only to $3,000.

In order to obviate delays in criminal cases we have authorized the Legislature to confer upon any inferior local court power to try without a jury offenses of the grade of misdemeanor. We have provided that any person may, in the manner prescribed by law, after examination or commitment by a magistrate, waive indictment and trial by jury on a charge of felony punishable by not exceeding five years' imprisonment, or of an indictable misdemeanor, all subsequent proceedings being had by information before a superior court of criminal jurisdiction, or a judge or justice thereof. This will remove a source of serious complaint in those counties where there is sometimes a period of three and four months between grand juries, so that a person charged with crime, even if willing to plead guilty, must be held on bail or kept in prison, until the next session of the grand jury, in order that the formality of indictment may be observed before his plea can be received. We have provided that in any criminal case the party accused shall have the right to at least one appeal. We have also provided that every person shall be entitled to the equal protection of the laws.

To enable the Legislature to deal with delinquent children, not as criminals, but as wards of the State, and to regulate domestic relations on a broader basis than the mere enforcement of penal laws, we have empowered the Legislature to establish children's court and courts of domestic relations, as separate courts or parts of existing courts or courts hereafter created, and to confer upon them such equity and other jurisdiction as may be necessary for the correction, protection, guardianship and disposition of delinquent, neglected or dependent minors, and for the punishment of adults responsible therefor, and of all persons legally chargeable with the support of wife or children who have abandoned or neglected to support either.

To prevent the constant partisan political legislation affecting the Court of Claims, we have continued that court as a constitutional tribunal, with appropriate jurisdiction for the hearing and determination of claims against the State.

VIII. We recommend the adoption of a new article respecting taxation, which empowers the Legislature to prescribe how taxable subjects shall be assessed, and to provide for officers to execute laws

relating to the assessment and collection of taxes, and for the supervision, review and equalization of assessments. We provide that the power of taxation shall never be surrendered, suspended or contracted away, except as to securities of the State or a civil division thereof, and that hereafter no exemption from taxation shall be granted, except by general laws and upon an affirmative vote of two-thirds of all the members elected to each house.

We recommend provisions under which the Legislature for the assessment of real property heretofore locally assessed may, with the approval of the electors, establish tax districts, embracing one county or any part thereof, and make the assessment-roll for such district serve for all the lesser tax districts within its boundaries, thus providing a uniform rule of assessment for all purposes throughout the county or district.

IX. We have provided for a department of conservation, to consist of nine commissioners to serve without compensation and to be appointed for terms to expire in nine successive years, their successors to be appointed for terms of nine years each, one of whom shall reside in each judicial district. This department is charged with the development and protection of the natural resources of the State, the encouragement of forestry and the suppression of forest fires throughout the State, the exclusive care, maintenance and administration of the forest preserve, the conservation, prevention of pollution and regulation of the waters of the State, the protection and propagation of its fish, birds, game, shell-fish and crustacea, except migratory fish of the sea within the limits of the marine district. We continue the provision that the forest preserve shall be forever kept as wild forest lands. We require the Legislature annually to make provision for the purchase of real property within the Adirondack and Catskill parks, the reforestation of lands and the making of boundary and valuation surveys, and we provide that the violation of any of the provisions of the article dealing with conservation may be restrained at the suit of the people, or of any citizen.

X. We have recognized the needs of the wage-earning class of our people; (1) by creating the Department of Labor and Industry as one of the civil departments of the State government, at the head of which is to be an Industrial Commission or Commissioner as may be provided by law; (2) by including in the amended Constitution the provisions of the Workmen's Compensation amendment adopted in 1913, and extending its provisions so as to embrace compensation for injury or death resulting from occupational diseases of employees, and (3) by conferring upon the Legislature power to regulate or prohibit manufacturing in tenement houses.

XI. We have extended the existing constitutional prohibition

against the sale, lease or other disposition of the Erie and other canals so as to embrace canal terminals heretofore or hereafter constructed, and we have provided that the abandonment, sale or other disposition of canals or canal property which shall cease to be a portion of the canal system of the State, shall be only under and pursuant to general laws which shall secure to the State a fair appraised value of the property abandoned or sold. We provide that the Legislature by general, not special laws, may provide for the lease of surplus waters of the State canals.

XII. We have continued with but slight changes the provisions of the existing Constitution respecting the composition of the Senate and Assembly, and the reapportionment of their members according to the number of inhabitants of the State, exclusive of aliens. We provide that such reapportionment, after the year 1916, shall be based upon the Federal census, unless the same shall not be available; and, in conformity with the home rule principle in its application to counties, we provide that in any city embracing an entire county, or more than one county, and having no board of supervisors, the members electing exercising the powers of the board of aldermen, shall meet and divide such county into assembly districts according to the rule prescribed by the Constitution.

XIII. We leave unchanged the provisions in the present Constitution requiring the State to provide for the maintenance and support of a system of free common schools wherein all the children of the State may be educated, and forbidding the use of the property, credit or money of the State directly or indirectly for the aid or maintenance of any school or institution wholly or in part under the control or direction of any religious denomination.

XIV. We have not deemed it expedient to recommend provisions making more difficult the adoption of the amendments to the Constitution; but in order that the attention of the public may be directed to any attempts at amendment, we have provided that in case any proposed amendment to the Constitution shall be adopted by either House of the Legislature, on the first Tuesday following such adoption, the two Houses shall convene in joint session for the consideration thereof, and that thereafter the proposal shall be considered and acted upon by the two Houses separately, and that such proposal shall not be passed until after it shall have been printed and upon the desks of the members in its final form for at least five calendar legislative days prior to final action.

XV. Other provisions not herein specifically enumerated have been adopted by us as desirable amendments to the existing Constitution. We earnestly recommend all of these proposals to the

favorable consideration of the electors of the State, believing that their adoption will result in a very great improvement in the government of the State and its civil divisions, and thus promote the welfare of all of its inhabitants.

In Convention, Albany, September 10, 1915.

Mr. Quigg — Mr. President, it must be admitted by us all that the composition of an address to the people that would suit us all is extremely difficult, and I can well imagine the embarrassment of the committee. There are six or eight lawyers in this room who have sat with me in an effort to compose a complaint, even a report upon some matter of business, and worked for four or five days together before we could get words that suited us. I see in the very first sentence here: "We have, in the revised constitution submitted, retained the general framework of the existing constitution". I do not think so. I think we have abandoned the general framework of the existing Constitution by handing over to the Governor all power of appointment and practically all power of expenditure. I do not know, of course, who is going to be Governor under this new Constitution for the first time, though, having these things that bugs and women have, these antennæ, I suspect I could name with some accuracy a few that would like to be Governor. Having a reputation for advising gentlemen who want to be Governors of this state, I want to say this to the successful one of such candidates: "Don't take that proposition too seriously. Don't set up the arbitrary and personal government that this instrument seems to advise you to, for, in the proportion that you do that and make your government visible, you will become invisible." Now that is not true, from my point of view, that the framework of the Constitution has been preserved. Then I turn to the last sentence: "We earnestly recommend all of these proposals to the favorable consideration of the electors of the State, believing that their adoption will result in a very great improvement in the government of the State and its civil divisions, and thus promote the welfare of all its inhabitants." I earnestly ask you to take that out, because I know there are a great many of us who cannot see that who may vote for the Constitution, as I expect to do in November, but I —

Mr. Wickersham — Will you tell me how you can vote for a Constitution unless you think it is going to make for the welfare of the inhabitants of the State?

Mr. Quigg — I have not said I would vote for it; I said I want to and hope to.

Mr. Wickersham — This is prepared as the expression of the men who were going to vote for it and who believe in it as an instrument for improving the government of the people of this State, and thereby making for the welfare of its inhabitants.

Mr. Quigg — Yes, and I will say with regard to that that you came here, no doubt, with your whole scheme prepared in advance and you have entitled it, just as you are entitling it now, "Reform for the welfare of the people".

Mr. President, I never saw a reform in my life, the thing that is called reform, that was ready to stand on its two feet with its face fronting the people. It always had to have, in its own opinion, to sustain it, some false shibboleth like "responsible government" or some pumpkin-headed scarecrow with which to affright the people, like "invisible government". It never was able to stand out and say the thing that it meant, any more than you have said it there.

Mr. Wickersham — Mr. President, I think it is not necessary to elaborate upon this address. The committee having the preparation of this address in charge has sought to give expression in the simplest possible language to what this Constitution provides which has been formulated and is to be presented to the people. We know — whether Mr. Quigg does or not — the difference between visible and invisible government. We know whether we have the courage of our convictions or not and this address — we could have made it shorter if we had more time perhaps, but we are presenting to the people of this State a program that is difficult to compress into a few words, a program for reforms that have been advocated long and never yet put before them in concrete form.

Mr. President, I for one am proud of the privilege that I have enjoyed in being a member of this Convention. I am proud, sir, to be one of those who have formulated a program of responsible government, which we lay before the people of this State, having confidence in their wisdom and their patriotism, believing that they will not be misled by any false shibboleths or any misleading advocacy, reposing complete confidence in that sober, second thought and mature judgment which has ever characterized the people of this State, and which, in my belief, will lead them to give to this Constitution which we now submit to them their overwhelming assent.

Mr. Sheehan — Were it not for the concluding sentence of this report, I would have refrained from saying anything on the subject matter. Fellow delegates, the last sentence is: "We earnestly recommend all of these proposals to the favorable consideration of the electors of the State, believing that their adoption will result in a very great improvement in the government of the State and its civil divisions, and thus promote the welfare of all of its inhabitants." Some of the specific matters recommended for ap-

proval met with the determined opposition of a number of delegates upon this floor. I marvelled when the gentleman from New York, Mr. Stimson, a few moments ago on the proposition preceding this one, declared that we were a body of men who believe in representative government. Many of us do; I have no doubt Mr. Stimson does, and I do not impugn his good faith in the slightest. But the thought occurred to me then, whether he fully appreciated when he was uttering that statement that for the first time in the history of this Constitutional Government of ours, we have written in this proposed Constitution that which sounds the death-knell of representative government. I wondered if he appreciated, and I wonder if this great body of representative men appreciate that you have written squarely into this Constitution a provision that hereafter representative government shall not be hereafter the guide for the State, but that direct democracy voting on every city charter in the fifty-six cities of the State, is to supplant the representative government under which we have grown and prospered. I noticed, Mr. President, that the distinguished chairman of the committee, and the committee itself, refrained in this address from making the specific suggestion that we were now taking this momentous step toward the referendum in this State. Let us see what the committee says. They speak in praise of the home rule provision, and then on page 8 they say "We provide a method for the adoption by existing cities of new charters for the exercise of such powers —

Mr. D. Nicoll — Was not this report signed by the Honorable Morgan J. O'Brien?

Mr. Sheehan — It was, as I understand it. I have so often disagreed with my brothers, Nicoll and O'Brien, that it is not at all extraordinary that we should differ at the concluding moments of the Convention.

Mr. President, it states here that the Convention has provided a method for the adoption by existing cities of new charters, which charters must be submitted to the Legislature and become effective if not disapproved by it. It seems to me, General Wickersham, that we ought to be open and frank with the people. That does not state the exact situation. It cannot be submitted to the Legislature for disapproval or approval until the people vote on it by referendum. Why don't we tell the people that we are going to give them this unheard of power? Doubtless you will get a lot of people whose hair is longer than the hair of the gentleman from Schenectady referred to by Mr. Smith, who will

vote for this proposition. Let us make it attractive to them. Let us tell them exactly what it is.

Mr. President, I do not do this in any spirit of levity but I suggest that we insert after the word "It" on page 8, line 17, the following: "We have also approved the principle of the referendum by providing that city charters shall be submitted to the voters at a general or special election for approval or disapproval."

Mr. Wickersham — The gentleman voted against the adoption of the Constitution a little while ago, as I understand?

Mr. Sheehan — I did. There is no man in this Convention who entered it with a more sincere desire to construct an instrument that would appeal to the conscience and the intelligence of the people of the State than did I. We have differed on some things. I voted against your home rule proposition for the reasons I have stated. I dare say that my friend, General Wickersham, will not rise in this presence and say he is in favor of the principle of the referendum. The only other propositions we disagreed about that were at all serious were the questions of the apportionment and taxation, and you are going to submit these separately. You should have submitted the home rule proposition separately. I voted for separate submission in order that the many good things we have done — and there are many of them — might get a fair, square show before the people on election day.

Mr. M. J. O'Brien — In reading the last sentence here I would like to add as an addenda — I do not wish to change in any way the report which I and the other members of the committee had an opportunity to prepare. You will see in the last sentence it is said that we earnestly recommend all of these proposals to the favorable consideration of the electors of the State, believing that their adoption will result in very great improvement to the government. I simply wish, for the record, to add at the end that I concur in recommending to the favorable consideration of the electors of the State all the proposals except the retention of the present provision of the existing Constitution respecting the composition of the Senate and Assembly.

Mr. Sheehan — Then it is not a unanimous report?

The President — The question is upon the adoption of the report.

The President — A roll call is asked. Is the demand seconded? A sufficient number are up. The gentlemen will be seated. The Secretary will call the roll on the adoption of the report of the Committee on Resolutions. All in favor of the adoption of the report will say Aye, all opposed will say No. The Clerk will call the roll.

Those who voted in the affirmative were: Adams, Aiken, Allen, F. C., Angell, Barrett, Bayes, Beach, Bell, Bernstein, Berri, Brenner, Buxbaum, Clearwater, Cobb, Coles, Cullinan, Curran, Dennis, Deyo, Doughty, Dunlap, Fancher, Fobes, Franchot, Gladding, Greff, Hale, Heaton, Hinman, Johnson, Jones, Landreth, Latson, Law, Leggett, Lennox, Lincoln, Lindsay, Low, McKean, McKinney, McLean, Mandeville, Martin, L. M., Marshall, Mathewson, Mealy, Meigs, Newburger, Nicoll, D., Nixon, O'Brian, J. L., O'Brien, M. J., Owen, Parker, Parsons, Pelletreau, Phillips, S. K., Reeves, Rhees, Rodenbeck, Ryder, Sanders, Sargent, Saxe, M., Schoonhut, Schurman, Sears, Sharpe, Smith, E. N., Standart, Steinbrink, Stimson, Tierney, Tuck, Van Ness, Waterman, Webber, C. A., Westwood, Whipple, White, C. J., Wickersham, Williams, Winslow, Wood, Young, C. H., Young, F. L., President.

Those who voted in the negative were: Austin, Baldwin, Barnes, Blauvelt, Bockes, Brackett, Bunce, Burkan, Byrne, Dahm, Daly, Dick, Donnelly, Donovan, Dooling, Drummond, Dunmore, Dykman, Eisner, Endres, Eppig, Fogarty, Foley, Ford, Frank, Green, Griffin, Harawitz, Heyman, Kirby, Kirk, Leary, Martin, F., Ostrander, Quigg, Rosch, Ryan, Saxe, J. G., Sheehan, Shipman, Slevin, Smith, R. B., Smith, T. F., Stowell, Unger, Ward, Weed.

When Mr. Austin's name was called he said: Mr. President, when I am asked to subscribe to the statement "We earnestly recommend all these proposals to the favorable consideration of the electors of the State", I cannot do otherwise than vote No.

When Mr. Barnes' name was called he said: The tone of this address, Mr. President, the attitude of mind with which it approaches the people, as well as some of the questions involved in it, and its merits, so far removed from all the methods of thinking that I have learned to use, compel me also to vote No.

When Mr. Brackett's name was called he said: I ask to be excused from voting. The people of this State asked for bread in the action of this Convention; you have given them a stone. You have abolished no useless office. You have reduced no swollen salary. You have saved no money to the taxpayer nor proposed any plan to save any money. On the contrary, you have increased salaries and the influences in control here are only sorry that they do not dare to increase more of them. You have declined to adopt the soundest of governmental principles, that no single community shall ever be allowed to control the State or the Legislature, and, more than that, you have attempted to here provide a system of centralization in the Executive heretofore undreamed of and in so doing you have turned your backs upon

the people. Somebody has referred here on the roll call to the majority and the minority of this body. I hope that no one is so silly as to think that such an illusion is or can be applied to political lines. The line of cleavage here is not between Republicans and Democrats. It is rather between those who believe in a system that keeps the people as far from actual participation in their government as possible, and those who believe that they should have actual and complete control. As a little leaven leavens the whole lump, so a big taint taints the whole lump. I vote No.

When Mr. Green's name was called he said: Mr. President, I ask to be excused from voting and will briefly state my reasons. I endeavored to secure the attention of the Chair before the vote was taken on how the proposed amendments should be submitted to the people, but I am sure that in the hurry he did not hear my feeble voice. It seems to me that we cannot longer claim to have confidence in the people or that we should much dread the dire vengeance of a "referendum" since we have refused to give the people a chance to vote upon the proposed amendments offered as a whole in one vote or to separate them as I believe we should into eighteen different articles. Mr. President, the people, as shown by past history, have exhibited exceptional discrimination in sifting the wheat from the tares when permitted to express by their ballots their preferences upon constitutional questions or upon other matters referred to them. The people — the electors of the State — ought to have had the right to vote upon each article separately and if given that right they would have justified the confidence reposed in them by this Convention. You have deprived the people of so just a privilege as voting as they preferred upon these articles separately and, I believe, they will express their righteous indignation, in judgment against those who distrusted the intelligence of the average voter. Coursing through the deliberations of this Constitutional Convention have been adverse criticisms of the people and of their State Legislature. The fear expressed that the people cannot be trusted — that they are unable to intelligently determine serious questions of state, and that they cannot be trusted to elect as good candidates as some one elected by them can appoint for them, I consider an undeserved reflection upon the voters which they have a right to and will resent in due time. In some states in the past two years scores or more of proposed amendments have been submitted at the same time, and the voters displayed good discrimination and discretion in the expression of their views. By your action to-day you say to the average intelligent voters of New York State: "You cannot be trusted to express your views on as many as eighteen proposed articles, hence we have done your

thinking for you by depriving you of the privilege of voting on these separate amendments." Fellow delegates, all we need to do is to go home and watch the opposition grow. Despite of all your specious pleadings to the contrary the work of this Convention will, I believe, be annulled by a vote of the people. I cannot join in all of the address, especially the concluding paragraph: "We earnestly recommend all of these proposals to the favorable consideration of the electors of the State." Therefore I vote No.

When Mr. Griffin's name was called he said: I beg leave to be excused from voting and wish to give my reasons. The report of this committee is in entire accord with the spirit of the majority of this Convention. They distrust the people. The only excuse for this Convention was the claim that certain reforms were necessary and this Convention has put into specific form certain articles, the short ballot and the State department articles and the judiciary article in which if not reforms at least great changes have been made, also the proposition of taxation and the proposition giving home rule to cities and villages. How many of these does the committee propose to submit to the people? Do they propose to submit one single article which contains the reforms for which they claim this Convention has deliberated? They have not. They have bulked all of these so-called reforms, good and bad, in an immense prize package and have presented as a separate proposition the apportionment question as to which they do not care a rap whether the people accept or refuse because the restrictions will remain the same. They also present separately the taxation article which they do not care whether the people accept or refuse. All of the reforms on which this Convention has deliberated are put in this prize package. I am in favor, Mr. President, of submitting each separate article to the intelligence of the voters and I therefore vote No.

When Mr. Haffen's name was called, he said: I beg to be excused from voting on the report at the present time. I desire to read the document completely through before I shall vote.

When Mr. Delancey Nicoll's name was called he said: Mr. President, I would explain my vote. I vote Aye, and I would like to have it noted on the Record that I concur in the sentiment expressed by Judge O'Brien, as an addition to the report.

When Mr. M. J. O'Brien's name was called he said: With the amendments suggested with regard to the recommendation made to the electors respecting the Senate and Assembly, I vote Aye.

When Mr. Wiggins' name was called he said: Mr. President, I am unable to vote on the report. I have never heard it read. I have never seen a copy. I sent out to the document room and cannot secure a copy, and therefore ask to be excused from voting.

The President — The vote as recorded by the Secretary is 88 Ayes, and 47 Noes. The report of the committee is agreed to.

Mr. Wickersham — I offer the following resolution and move its adoption.

The Secretary — By Mr. Wickersham: Resolved, That the address to the people now adopted be authenticated by the President and Secretary of the Convention and filed by them in the office of the Secretary of State; that in addition to the copies provided for in rule 70 and rule 71, 20,000 copies be printed as a Convention document, that 100 copies be distributed to each delegate and the remaining copies be disposed of as the President may direct.

The President — All in favor of the resolution will say Aye, contrary No. The resolution is adopted.

Mr. Wickersham — Mr. President, I offer the following resolution and move its adoption.

The Secretary — By Mr. Wickersham: Resolved, That the President of the Convention be and he hereby is authorized to designate some suitable person or persons to revise and index the Record of the Convention and to index the journal, documents and the proposed constitutional amendments, and that the expense incurred for such service, not exceeding $5,000, be paid out of the money heretofore appropriated for the expenses of the Convention upon vouchers signed by the President or the Vice-President of the Convention and by the Secretary or Assistant Secretary designated by the Secretary for that purpose, the work to be done under the supervision and approval of a committee of three members of the Convention, to be appointed by the President; Further Resolved, That the revised Record, journal and documents be printed and bound under the Convention printing contract, that the printed and bound copies be delivered to the State library for distribution to delegates, libraries and educational institutions, and otherwise, and that the sum of $10,000, or so much thereof as may be necessary, be paid for such printing and binding out of the unexpended balance of the appropriation for the expenses of the Convention.

The President — The Chair begs leave to communicate to the Convention a statement which he has of the expense incurred in the indexing and revising of the Record and proceedings of the Constitutional Convention of 1894. That was done under the direction of the Legislature in the years 1896, 1897, 1898 and 1899, and the work for which this resolution proposes to appropriate $5,000 cost $30,627.65. The communication of the printer regarding the printing of the revised Record contains a statement by him that he considers the work would come under the Convention contract, and his estimate for printing 2,000 copies is $8,800

and something — for printing and binding the 2,000 copies referred to in the resolution.

All in favor of the resolution will say Aye, contrary No. The resolution is agreed to.

Mr. Wickersham — I offer the following resolution and move its adoption.

The Secretary — By Mr. Wickersham: Resolved, That the Assistant Secretary having charge of winding up the business of the Convention, deposit all books, records and papers of the Convention, not required to be filed with the Secretary of State or otherwise provided for by order of the Convention, in the State library.

The President — All in favor of the resolution will say Aye, contrary No. The resolution is agreed to.

Mr. Wickersham — Mr. President, I offer the following resolution and move its adoption.

The Secretary — By Mr. Wickersham: Resolved, That all stationery, supplies and materials purchased for the Convention and remaining after the close of its business be delivered to the Superintendent of Public Buildings to be disposed of as the Legislature shall prescribe.

The President — All in favor of the resolution will say Aye, contrary No. The resolution is agreed to.

Mr. Wickersham — Mr. President, I offer the following resolution and move its adoption.

The Secretary — By Mr. Wickersham: Resolved, That the thanks of this Convention be tendered to the members of the Revision Committee for their painstaking, exacting and arduous labors in their work in connection with the Convention.

The President — All in favor of the resolution will say Aye, contrary No. The resolution is agreed to.

Mr. Wickersham — Mr. President, I offer the following resolution and move its adoption.

The Secretary — By Mr. Wickersham: Resolved, That the thanks of this Convention be tendered to John H. Finley, Commissioner of Education, and to his assistants in charge of the State Library for their courtesy and kindness to the delegates to the Convention during it sessions.

The President — All in favor of the resolution will say Aye, contrary No. The resolution is agreed to.

The Secretary — By Mr. S. K. Phillips: Resolved, That Michael T. McGrath, general clerk of the Assembly, Ned A. Cyphers, stenographer to the clerk of the Assembly, and G. C. Squires, second assistant journal clerk of the Assembly, be allowed and each paid the sum of $455 for services rendered to the Constitutional Convention while the Assembly was not in session

and at such times as their services were not required by the duties of their positions.

The President — All in favor of the resolution say Aye, contrary No. The resolution is agreed to.

The Secretary — By Mr. S. K. Phillips: Resolved, That the services of assistant secretary Hammond, Harvey B. Dingman, superintendent of documents, John S. Patterson, assistant superintendent of documents, R. C. Derick, index clerk, Joseph A. Allen, chief of pages, and Otto Werner, messenger, be continued for thirty days, and that the services of Cornelius Shufelt, clerk of the Committee on Contingent Expenses, and Fred M. Bishop, financial clerk, continue for ten days to close up the work of the Convention, and that the officers of the Convention be authorized to certify compensation and expenses at the rates heretofore fixed by the Convention.

The President — All in favor of the resolution say Aye, contrary No. The resolution is agreed to.

Mr. J. L. O'Brian — I offer the following resolution and move its adoption.

The Secretary — By Mr. J. L. O'Brian: Resolved, That the thanks of this Convention be tendered to the officers, clerks and employees of the Convention for their able and efficient services and the satisfactory manner in which they have discharged the duties of their several offices.

The President — All in favor of the resolution will say Aye, contrary No. The resolution is agreed to.

Mr. Parsons — I offer the following resolution and move its adoption.

The Secretary — By Mr. Parsons: Resolved, That the thanks of this Convention be tendered to the elevatormen and to all other employees of the Capitol building for their courtesy and kindness to the delegates of the Convention during the session.

The President — All in favor of that resolution will say Aye, contrary No. The resolution is agreed to.

Mr. Stimson — Mr. President, I offer the following resolution and move its adoption.

The Secretary — By Mr. Stimson: Resolved, That the President be authorized, upon the approval of the revised Constitution by the people, to appoint from the members of the Convention, a committee of thirty to tender to the Legislature their services as a committee and through appropriate sub-committees to aid throughout the performance of the difficult and important duties which will rest upon the Legislature of 1916.

Mr. Quigg — Mr. President, I hope it will not be adopted. Are we going to dictate to the Legislature how it shall perform its duties?

Mr. Wickersham—Mr. President, there are a great many things devolved upon the Legislature in the new Constitution. If it be adopted by the people, the members who took part in framing it will no doubt be of great service to the Legislature in helping to formulate and assist the Legislature in putting on the statute books the necessary statutes. I have spoken with members of the Legislature upon the subject and they, with one accord, have commended the suggestion embodied in this resolution.

Mr. Quigg — Don't you think you had better wait until you are asked?

Mr. Wickersham — No, we thought we had better get ready in advance and then tender our services.

Mr. Foley — As a member of the Legislature, I see no insinuation in the adoption of this resolution that you are attempting to dictate to the members of the Legislature. In the event that the Constitution should be adopted, or any part of it, I think it would be a wise and practical suggestion that a committee from this body co-operate with the members of the Senate and Assembly in securing the legislation necessary to carry out the purposes we have adopted here.

The President — All in favor of the resolution will say Aye; contrary No. The resolution is agreed to.

Mr. Wickersham — Mr. President, there remains the signing of the Proposed Constitution which we have adopted. I suggest that we now sign it and then take a recess after which we can come back and finish up what remains to be done before we finally adjourn and the Constitution can be delivered to the Secretary of State.

Mr. Wiggins — Before that course is followed, I should like to offer the following resolution and move its adoption.

The Secretary — By Mr. Wiggins: Resolved, That the Secretary of State be requested to furnish each member of the Convention with 100 copies of the Proposed Constitutional Amendments prepared by him for delivery to the voters of the State, showing the old matter stricken out and the new matter inserted.

The President — All in favor of the resolution will say Aye; contrary No. The resolution is agreed to. May the Chair call Mr. Wickersham's attention to the importance of providing for a notification to the Secretary of the State of the time when the Convention will be ready to deliver to him the revised Constitution? That can be fixed at the time of the motion for recess.

Mr. Wickersham — After the signing by the members.

The President — The engrossed copy of the draft of the revised Constitution from which the Secretary read and upon which we have voted will now be placed upon the table in the well in front of the President's desk for the purpose of signature.

Mr. Wickersham — May I make a suggestion, that the Constitution be first signed by the President and Secretary, then the delegates-at-large be called upon to sign it, and then the members be called by districts. I think that would facilitate the matter and avoid confusion. After the President and Secretary have signed, the Vice-Presidents should sign.

The President — If there be no objection, that course will be followed. The revised Constitution, in accordance with the resolution of the Convention already adopted, will first be attested by the President and the Secretary. The Vice-Presidents will then be called upon and then the delegates-at-large, and then the delegates in order of their senatorial districts. Will Mr. Schurman take the Chair for the moment? (Mr. Schurman takes the Chair while the President and Secretary sign the revised Constitution.)

The President — Will the gentlemen of the Convention be good enough to take their seats? Will the gentlemen not of the Convention be good enough to withdraw from the well? The Secretary will now call the roll, beginning with the delegates-at-large, and continuing with the delegates in the order of their districts. The Secretary will call and as the names are read the gentlemen will —

Mr. Wickersham — The motion was that the delegates-at-large should be called upon to sign first.

The President (continuing) — as their names are called, the delegates will present themselves and sign their names. The Secretary will call. (Delegates sign the revised Constitution.)

The President — The Convention will come to order.

The President — Is the Secretary of the Convention here? Will the Secretary present himself and sign the certificate upon the desk?

(Secretary signs certificate.)

Mr. Wickersham — I offer the following resolution and move its adoption.

The Secretary — By Mr. Wickersham: Resolved, That the thanks of the Convention be extended to the librarian and assistant librarian in the legislative library for their efficient service during the session of the Convention.

The President — All in favor of the resolution will say Aye, contrary No. The resolution is agreed to.

Mr. Wickersham — Mr. President, I submit the following resolution and move its adoption.

The Secretary — By Mr. Wickersham: Resolved, That the thanks of the Convention are hereby tendered to the gentlemen of the press for the fairness and impartial way with which they have set before the public the proceedings and the work of the Convention.

The President — All in favor of the resolution will say Aye, contrary No. The resolution is agreed to.

Mr. Wickersham — Mr. President, I move that we take a recess until a quarter of seven and that at a quarter to seven the Constitution as attested be delivered by the President to the Secretary of State.

The President — Will Mr. Wickersham include in his motion a notification to the Secretary of State?

Mr. Wickersham — And that the Secretary of State be so notified.

Mr. D. Nicoll — Mr. President, in connection with that I move that we take a recess and I beg to announce that a ceremonial in which all the members of the Convention are interested will take place in the Assembly Parlor immediately.

The President — All who are in favor of the motion for a recess until a quarter before seven, and that a committee be appointed to wait upon the Secretary of State and advise him that at the time of reconvening the Convention will be ready for the delivery to him of the Constitution, will say Aye, contrary, No. The resolution is agreed to. The Chair appoints as the committee Mr. Vice-President Schurman, Mr. Vice-President Morgan J. O'Brien and Mr. Wickersham. The Convention now stands in recess until a quarter before seven this evening.

Whereupon at 6:07 o'clock P. M., the Convention took a recess until 6:45 P. M., the same day.

AFTER RECESS—7:35 P. M.

The President — The Convention will come to order.

Mr. Wickersham — I offer the following resolution and move its adoption.

The Secretary — By Mr. Wickersham. Resolved, That the thanks of the Convention be extended to John K. Marshall, stenographer, and to his assistants, and to J. B. Lyon Company, Printers, for their excellent services rendered to the Convention.

The President — Those in favor will say Aye. The resolution is adopted.

Mr. Clearwater — I ask, sir, for unanimous consent that the rules be suspended and that some ladies who are without the bar be invited and admitted to seats upon the floor of the Convention.

The President — Mr. Clearwater asks unanimous consent that the rules be suspended and that the ladies without the bar be permitted to enter and take seats upon the floor of the Convention.

Is there objection? The Chair hears none and the rules are suspended. The Chair will say to the ladies without the bar that now is the accepted time. They are permitted to enter and do everything but vote. The Chair hands down to the Secretary and lays before the Convention a communication from the Secretary of State containing the figures of an unofficial census of the State by counties as of June the first, 1915, which will be read into the record of the Convention.

STATE OF NEW YORK,

SECRETARY OF STATE'S OFFICE,

ALBANY, N. Y., *September* 9, 1915.

The Constitutional Convention, Albany, N. Y.:

GENTLEMEN.— In accordance with your resolution, I submit herewith unofficial census of this State by counties, as of June 1, 1915.

Yours very truly,

FRANCIS M. HUGO,
Secretary of State.

County	Citizens	Aliens	Total
Albany	171,018	14,521	185,539
Allegany	39,417	744	40,161
Bronx	499,996	125,639	625,635
Broome	85,461	8,238	93,699
Cattaraugus	67,836	6,088	73,924
Cayuga	63,163	4,356	67,519
Chautauqua	107,224	9,691	116,915
Chemung	59,818	2,350	62,168
Chenango	35,813	845	36,658
Clinton	46,033	2,244	48,277
Columbia	40,166	3,278	43,444
Cortland	28,946	1,222	30,168
Delaware	44,532	1,544	46,076
Dutchess	82,193	6,659	88,852
Erie	514,773	62,217	576,990
Essex	30,495	1,614	32,109
Franklin	42,530	3,318	45,848
Fulton	42,154	3,467	45,621
Genesee	37,106	3,794	40,900
Greene	29,074	1,114	30,188
Hamilton	3,885	198	4,083
Herkimer	54,432	7,690	62,122
Jefferson	74,284	6,028	80,312
Kings	1,451,367	351,824	1,803,191

County	Citizens	Aliens	Total
Lewis	24,848	1,152	26,000
Livingston	37,124	2,792	39,916
Madison	39,594	1,739	41,333
Monroe	284,767	37,428	322,195
Montgomery	52,320	8,625	60,945
Nassau	98,859	16,968	115,827
New York	1,481,121	661,940	2,143,061
Niagara	91,259	16,294	107,553
Oneida	145,663	23,652	169,315
Onondaga	196,803	18,159	214,962
Ontario	52,211	2,711	54,922
Orange	108,866	9,842	118,708
Orleans	31,876	2,566	34,442
Oswego	71,645	4,671	76,316
Otsego	47,277	1,243	48,520
Putnam	12,480	1,036	13,516
Queens	352,192	43,459	395,651
Rensselaer	115,424	5,403	120,827
Richmond	85,117	13,567	98,684
Rockland	44,760	4,814	49,574
St. Lawrence	88,651	8,132	96,783
Saratoga	60,395	4,182	64,577
Schenectady	86,734	12,115	98,849
Schoharie	22,455	585	23,040
Schuyler	13,550	407	13,957
Seneca	49,383	4,158	53,541
Steuben	80,793	2,548	83,341
Suffolk	101,268	16,178	117,446
Sullivan	35,307	3,038	38,345
Tioga	24,818	449	25,267
Tompkins	35,069	1,617	36,686
Ulster	78,629	5,411	84,040
Warren	31,794	1,262	33,056
Washington	45,174	2,498	47,672
Wayne	50,882	3,417	54,299
Westchester	271,195	47,342	318,537
Wyoming	31,705	1,477	33,182
Yates	17,968	565	18,533
	8,151,692	1,622,125	9,773,817

The President — The Secretary will make announcements.

The Secretary — All persons connected with the Constitutional Convention having keys to lockers, desks, rooms, etc., are

requested to deliver the same prior to their departure from Albany to the Custodian of the Senate at room 319, or leave the same at the Assembly postoffice or with the undersigned.

(Signed) WILLIAM H. STORRS,
Superintendent of Public Buildings.

Members of the Committee on Cities are reminded of their engagement in the committee room immediately after the adjournment.

Mr. Cullinan — Mr. President, I would like to inquire if that census will be printed as a document before we leave —

The President — It will be printed in the Record. If the gentleman wishes it printed as a document —

Mr. Cullinan — The Record will answer.

Mr. Berri — Mr. President, looking around this room, and seeing so many ladies sitting here with us, this may possibly be a real thing in the Convention twenty years from now.

The President — The Chair will be pleased to entertain any motion Mr. Berri chooses to make on that subject.

Mr. Berri — Well, I assure you, Mr. President, that if I had my way, that is the way it would be.

The President — The Chair understands that the Committee appointed to wait upon the Secretary of State is ready to report and it will now perform its duty. (The Committee consisting of Vice-Presidents Schurman and O'Brien escorted the Secretary of State to the rostrum.)

Mr. Schurman — Mr. President, the Committee have carried out the instructions of the Convention and communicated with the Secretary of State, who is now before you.

The President — Will the Secretary of State and Dr. Finley be good enough to take their places at the President's desk? Mr. Secretary, I hold here the revised Constitution adopted by the Constitutional Convention of the State of New York of the year 1915. To the end that it may be preserved in the archives of the State, and that you may perform your duty under the Constitution and the laws to submit it to the people for their sovereign action, I now deliver it into your hands. The other documents, the books and papers, the records and sources of information of the Convention are by the resolution of the Convention to be delivered to your care, Dr. Finley, to be preserved for those who come after us, charged with similar duties.

Secretary of State Hugo — Mr. President, gentlemen of the Convention, ladies and gentlemen. It was my pleasure as temporary President of this Convention to preside over its deliberations during its preliminary organization; and now after five months of

patriotic service under the advice and guidance of you, its eminent presiding officer, this assembly has prepared for submission to the people of the State a plan of government, which, if approved, will become the organic law for the next twenty years. You on behalf of this Convention deliver this plan to me, engrossed in script print form, as custodian of the records of this State, for its safe-keeping and submission to the voters of this State on the second of November. I accept it in the name of the people of the State for those purposes. In formulating this proposed Constitution I believe this Convention has been actuated by one single purpose, to outline a plan of government which will secure to the whole people of the State the protection of their rights and the best opportunity for their development. In my judgment principles have controlled everything, and personal motives nothing. In dealing with the problems of the administration of justice and consolidation of the functions of administrative government, the budget, taxation, and the other large problems which have come before you, your deliberations have been guided by the experience of the past, the needs of the present and our aspirations for the future. If you think me presumptuous, gentlemen of the Convention, in thanking you in behalf of the whole people of this State, then accept my personal thanks for your unselfish service. Each one of you will go to his home conscious that he has contributed his part to a great public work and your greatest reward will be the knowledge that you have assisted in the preparation of a Constitution which will promote, in my judgment, the happiness and well-being of the entire citizenship of this Empire State. As a function of my office, it becomes my duty and my pleasure to accept this document on behalf of the people of the State. I thank you.

Mr. D. Nicoll — Mr. President, I offer the following resolution and move its adoption, and ask that the First Vice-President put the question.

The Secretary — By Mr. D. Nicoll: Resolved, That the thanks of this Convention be tendered to the Honorable Elihu Root for the ability, fairness and courtesy which have distinguished his services as President of this Convention.

Vice-President Schurman — Gentlemen, you have heard the resolution. Those in favor of its adoption will please rise. The Clerk will record it as a unanimous vote.

Mr. Sheehan — Mr. President, I offer the following resolution and move its adoption.

The Secretary — By Mr. Sheehan: Resolved, That the thanks of the Convention be tendered to the Honorable Jacob Gould Schurman and the Honorable Morgan J. O'Brien, for their

efficient and impartial services as Vice-Presidents of this Convention.

The President — All in favor of the resolution will signify by rising. The gentlemen will be seated. The resolution has been unanimously adopted, except that Mr. Schurman did not rise.

The President — Gentlemen of the Convention: Our work is done. The long, hard months during which we have been wrestling with questions of government, and character has been struggling with character in the discussions of the proposed amendments to the Constitution, are over. We have produced a revised Constitution which is not a model of style, of form, of brevity, of theoretical perfection. Any one of us with the models which are available could have produced in the solitude of his own office a more perfect and harmonious scheme of government; but this instrument is fitted by patience, experience, knowledge and effort, to the actual conditions of the life of the people who have been growing for three generations, of people living one-half upon the sea and the other half in the river valleys and among the hills and on the shores of the Great Lakes, of a people of 10,000,000 with varied industries and interests and prepossessions and prejudices and sympathies; and to know the full meaning of all the provisions which this instrument contains one must have studied and know the life of the people of all the great State of New York. When we came to our work on the 6th of April last, we addressed ourselves first to studying the conditions of the government of the State. We found that there were serious evils which had resulted in an enormous increase of expenses from $12,000,000 at the time of the last Convention to $42,000,000 at the time of our meeting; an enormous increase of indebtedness and an apparent impossibility meeting all attempts to curtail expenses or to prevent the further accumulation of debt. Upon further inquiry we found that the executive and administrative organization of the State was loose, confused, ill-regulated; that 150 and more separate agencies were going about the business of government, responsible to no one in particular, each one spending all the money that it could get, and there was no such concentration of responsibility and power as was necessary to bring to accountability the agencies of the State which were plunging our people into extravagance and debt. We found that the Legislature of the State had declined in public esteem and that the majority of members of the Legislature were occupying themselves chiefly in the promotion of private and local bills, of special interests, with which they came to Albany, private and local interests upon which apparently their re-elections to their positions depended, and which made them cowards, and demoralized the whole body. We found

that the course of justice was slow and expensive and hindered by technicalities and subtleties which kept honest men out of their rights. We found that the great offices, the hundreds of offices of the States were swarming with men who held sinecures, who were put in their places for the benefit of particular organizations and not for the services that they were to render to the State. We have done our best to devise and adopt measures which will remedy these evils. When one's automobile acts strangely and goes wrong, one does not berate it or pass resolutions about it; one endeavors to put his finger on the fault in the machinery and correct the fault. The capacity of a people for self-government is measured by their ability to create and maintain institutions that will govern. Without the institutions of government there can be no government, for the vote alone accomplishes nothing, but in the creation of an active agent. We were elected by the people of the State to overhaul the machinery of government, to ascertain if we could where in that complicated mechanism lay the fault that caused the evils under which they suffered. We have done the best we could. We have given our best brain, our best strength, our best devotion to the accomplishment of that duty and now we submit our work to the people of the State, and we ask of them only this: As we have been your loyal and devoted servants, doing your behest to the best of our ability, be loyal to us and give at least a presumption in favor of the work that we have done. If you find it wrong, reject it; but do not reject it upon light or unconsidered reasons, for it is the best that your representatives, elected by you, devoting themselves for all this long summer to the work, can do to cure the evils of your government.

There are two special things which I wish to say before the close of this Convention. One is — and I would like to say it to every citizen of the State — one is that this Convention has risen above the plane of partisan politics. It has refused to make itself or permit itself to be made the agency of party advantage except as faithful service for the State is a benefit to party. It has refused to engage in the play of politics. No caucus and no conference has marred the impartiality of our proceeding. No resolution has bound the judgment or conscience of any member of this Convention. Our conception of our duty was to leave behind strife of party, and upon the higher plane of patriotism and love of country, to join all together, whatever our parties, in doing the best we could for the prosperity of our beloved State. One effect of this course of conduct on our part has been that the debates of this Convention compare most favorably with the debates of any parliamentary body which has sat in deliberation during the lifetime of any man in this room. I have seen and heard the debates

of many parliamentary bodies and never have I heard or read debates in which the matter was more relevant, the discussion more earnest and to the point, the attempts at display less conspicuous, the speeches for home consumption more infrequent, and real discussion, that real open, public discussion of a deliberative body, which is the essential process of free self-government on a higher level than in this Convention of the year 1915.

And another result of this course of conduct has been that the thirty-three measures adopted by the Convention have been adopted by these astonishing votes: Twelve of the measures were adopted unanimously; twelve were adopted by majorities of more than ten to one; of the remaining nine, two were adopted by majorities of more than seven to one; two by majorities of more than four to one; two by majorities of more than three to one; and three by majorities of more than two to one. That, in an assemblage composed of two different and perennially conflicting parties, was the result of common patriotic contributions by the members of both parties towards the perfection of measures in a Convention which was doing its work with a sense of the dignity of the people it represented, and not for party advantage. All the great measures of this Convention were adopted not only by the votes, the affirmative votes of a majority of the Republicans but by the affirmative votes of a majority of the Democrats in the Convention. The executive reorganization plan, commonly called the short ballot, was adopted by the votes of 97 Republicans in the affirmative and 15 in the negative, and of 28 Democratis in the affirmative and 15 in the negative. The budget, that great new departure in the finance of the State, was adopted by the affirmative vote of 101 Republicans to 2 Republicans in the negative and of 36 Democrats in the affirmative to 2 in the negative. The city home rule bill was adopted by 102 Republicans voting in the affirmative and 2 in the negative; by 18 Democrats voting in the affirmative and 15 in the negative. The county home rule bill, which completes the scheme, was adopted by 91 Republicans voting in the affirmative and 9 in the negative; and 37 Democrats voting in the affirmative and 2 in the negative. The judiciary bill, that great measure which prescribes reform in judicial procedure that in the best judgment of this Convention will give the honest man the chance of his rights, was adopted by the affirmative vote of 103 Republicans to 1 Republican in the negative and 32 Democrats to 2 Democrats in the negative. So that in substance, upon the great measures of this Convention both parties of the State are united, both have given their suffrages in favor of the reforms that we propose. One other thing I wish to say and that is that similar evils to those that we have found in our State government have

been found in the governments of many other states. People of those states have had recourse to an abandonment or a partial abandonment of representative government. They have had recourse to the initiative and referendum and the recall, the recall of officers and the recall of decisions. In this Convention we have offered the most irrefutable, concrete argument against those nostrums and patent medicines in government and in favor of the preservation of that representative government which is the chief gift of our race to freedom, by undertaking to reform representative government, instead of abandoning it and to make it worthy of its great function for the preservation of liberty. This Constitution is not a matter of little prejudices or oppositions. It is not a business to be decided accordingly as one opposed to raising this salary or that, or to extending the Workmen's compensation or restricting it, or to making a little change in this office or that. It is to be decided upon great lines for it is a great work. It is a great departure in government. It is the best that the men selected by the people of the Empire State, to do the work for them, can do towards rescuing the representative government of our fathers from the obloquy which has come upon it in recent years. These great measures of the reorganization of the executive, of the new method of State finances, of the relief of the Legislature from those petty preoccupations of local and private bills, which have been destroying its morale, of the establishment of the privileges and blessings of local self-government for the cities and for the counties of the State, of reform in judicial procedure, all these are great measures which should appeal to a great people who are competent to maintain the perpetuity of representative self-government. And upon those great lines I feel assured you may be confident the people's verdict will be cast. Now, gentlemen of the Convention, I bid you farewell with assurance of respect and esteem and affection. We have labored long together in a common cause, and I am sure we shall all carry to our homes the inestimable reward of faithful service in the possession of a host of brothers, children of our common country, devoted to the same cause, and loving each other as brother Americans. So I declare the Constitutional Convention of the State of New York of the year 1915 to be adjourned without day.

Whereupon at 8:20 p. m. the Constitutional Convention of the State of New York adjourned *sine die.*

Pursuant to the authority vested in me by the following resolution:

Resolved, That the President of the Convention be and he hereby is authorized to designate some suitable person or persons to revise and index the Record of the Convention and to index the Journal, documents, and the Proposed Constitutional Amendments and that the expense incurred for such services (not exceeding $5,000) be paid out of the moneys heretofore appropriated for the expenses of the Convention upon vouchers signed by the President or the Vice-President of the Convention and by the Secretary or Assistant Secretary designated by the Secretary for that purpose. The work to be done under the supervision and approval of a committee of three members of the Convention to be appointed by the President.

Further Resolved, That the revised Record, Journal, and documents be printed and bound under the Convention printing contract; that the printed and bound copies be delivered to the State Library for distribution to delegates, libraries, educational institutions, and otherwise, and that the sum of ten thousand dollars ($10,000), or so much thereof as shall be necessary, be paid for such printing and binding out of the unexpended balance of the appropriation of the expenses of the Convention.

I hereby designate Fred W. Hammond and William K. Mansfield, as his assistant, to revise and index the Record of the Constitutional Convention of 1915 and to index the Journals, documents and Proposed Constitutional Amendments thereof.

And I hereby appoint Leroy A. Lincoln, George A. Blauvelt and Robert R. Law to be the committee under the supervision and approval of which the said work of revision and indexing is to be done, Mr. Lincoln to be chairman of the committee.

ELIHU ROOT,
President of the Convention.

STATE OF NEW YORK,
COUNTY OF ALBANY,
Office of the Assistant Secretary
of the Convention. } *ss.:*

I, Fred W. Hammond, Assistant Secretary of the Convention do hereby certify that I have compared the preceding with the original copy of the Journal of the Constitutional Convention on file in my office, and that the same is a correct transcript therefrom.

IN WITNESS WHEREOF I have hereunto set my hand this seventh day of February, 1917.

FRED W. HAMMOND,
Assistant Secretary.

We, the undersigned, members of the Committee appointed pursuant to the foregoing resolution do hereby certify that we have examined the revision and index of the Record of the Constitutional Convention of 1915 and the indices of the Journal, documents and Constitutional Convention amendments and do hereby approve the same.

LEROY A. LINCOLN, *Chairman.*
GEO. A. BLAUVELT,
ROBERT R. LAW.

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OF THE

CONSTITUTIONAL CONVENTION

1915

[4385]

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